United States Court of Appeals

for the Second Circuit

APPENDIX

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75-7290

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P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

ACLI INTERNATIONAL, INC.,

Plaintiff-Appellant,

against

S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S.A., dba MEXICAN LINE,

Defendants-Appellees,

TRANSPORTACION MARITIMA MEXICANA, S.A.,

Defendant and Third-Party Plaintiff-Appellee and Cross-Appellant,

against

PITTSTON STEVEDORING CORPORATION,

Third-Party Defendant-Cross-Appellee.

73 Civ. 1297 HRT

(Caption continued on inside cover)

UNITED STATES COURT OF APPEALS
FILED
AUG 15 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

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One State Street Plaza
New York, New York 10004

PAGINATION AS IN ORIGINAL COPY

ACLI INTERNATIONAL, INC.,

Plaintiff-Appellant,

against

TRANSPORTACION MARITIMA MEXICANA, S.A., dba MEXICAN LINE and SMITH AND JOHNSON (SHIPPING) INC.,

Defendants-Appellees,

TRANSPORTACION MARITIMA MEXICANA, S.A.,

Defendant and Third-Party Plaintiff-Appellee and Cross-Appellant,

against

PITTSTON STEVEDORING CORPORATION,

Third-Party Defendant-Cross-Appellee.

73 Civ. 5341 HRT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Page
Docket Entries	A1
Pre-Trial Order	A4
Pre-Trial Memorandum of Third-Party Defendant	A7
Pre-Trial Memorandum of Plaintiff	A11
Pre-Trial Memorandum of Third-Party Plaintiff	A15
Plaintiff's Proposed Findings of Fact and Conclusions of Law	A20
Third-Party Defendant's Proposed Findings of Fact and Conclusions of Law	A28
Amended and Supplemental Proposed Findings of Fact and Defendant and Third-Party Plaintiff's Conclusions of Law	A32
Plaintiff's Amended and Supplemental Proposed Findings of Fact and Conclusions of Law	A44
Findings of Fact and Conclusions of Law	A50
Judgment	A62
Stenographer's Minutes	1
Motion to Dismiss Complaint	99
Denial of Motion to Dismiss Complaint	101
Motion to Dismiss Third-Party Complaint	177
Motion to Dismiss Complaint	224
Deposition of Frederick W. Meeker	227
Deposition of Gerardo Sanchez	266
Deposition of Jaime Rosique	275
Deposition of Ruben Villegas	299

INDEX TO WITNESSES

Page

PLAINTIFF'S:

ALBERT R. LOVITTS

Direct..... 3

Cross..... 24

Redirect..... 41

STANLEY I. WALD

Direct..... 43

Cross..... 49

Redirect..... 57

RICHARD T. FREYER

Direct..... 59

Cross..... 67

Redirect..... 73

PETER BECKETT

Direct..... 73

Cross..... 83

SIDNEY KAHAN

(Rebuttal)
Direct..... 180

Cross..... 190

HERBERT GOLDENBERG

(Rebuttal)
Direct..... 194

Cross..... 200

Index to Witnesses

Page

DEFENDANT'S:

EMILIO ESPANA KRAUSS

Direct..... 106

Cross..... 134

KENNETH MC CLURE

Direct..... 136

RUBIN VILLEAS DOMINGUEZ

Direct..... 142

Cross..... 163

DOCKET ENTRIES

CIVIL DOCKET — IN ADMIRALTY

UNITED STATES DISTRICT COURT

JUDGE TYLER

Jury demand date:

73 CIV. 1297

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
ACLI INTERNATIONAL, INC. AGAINST S.S. CAMPECHE, HER ENGINES, BOILERS, ETC. TRANSPORTACION MARITIMA MEXICANA S.A. d/b/a MEXICAN LINE and 3/11/73 TRANSPORTACION MARITIMA MEXICANA S.A. Deft. and 3rd.pty. pltf. against PITTSTON STEVEDORING CORPORATION. Third Party Deft.	For plaintiff: HILL, RIVKINS, MCGOWAN & CAREY. 96 Fulton Street, N.Y.C. N.Y. 10038 BE 3- 6171 For defendan WILSON & HOPKINS (Transportacion M 116 John St.,N.Y.C., 10038 (CO 7-9 BIGHAM ENGLAR JONES & HOUSTON (3rd.p 99 John Street, N Y C 10038 (732 Haight,Gardner,Poor & Havens One State Street Plaza,NYC100 DI 4-6800 (Transportacion Maritime

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		
J.S. 5 mailed X	Clerk	MAR	28	1973				
				3/30/70		15		15
J.S. 6 mailed ✓	Marshal							
Basis of Action: DAMAGE TO CARGO. $15,219.29	Docket fee							
	Witness fees							
Action arose at:	Depositions							

A 2

Docket Entries

INTL INC. VS. S.S. CAMPECHE, her engines, etc. et-al

JUDGE TYLER 73 CIV. 1297

DATE	PROCEEDINGS	Date Ord. Judgment
Mar28-73	Filed Complaint. Issued Summons.	
pr.9,73	Filed summons with marshals ret.served Mr. Johnson 3-29-73.	
pr.11,73	Filed ANSWER to Comp. by Transportacion Maritima Mexicana S.A.	W&H
pr.11,73	Filed Third Party comp.	
r.17,73	Filed summons with marshals servedPattston Stevedoring 4/13/73.	
y 8,73	Filed Answer to 3rd.pty. Comp. by Pittston Stevedoring Corp.	
y 9,73	Filed interrogatories of 3rd. pty. deft. addressed to 3rd.pty. pltf.	BEJ&H
25-73	Filed Deft&3d pty pltff's Notice of Deposition of Pltff on 8/15/73,2:30 P.M.Rm1620, 116 John St.NYC	
e 28 73	PRE-TRIAL CONFERENCE HELD BY Judge Tyler	
a.17-74	Filed Pltff's Affdvt re:actions be consolidated or tried together on ground that they involve common questions of law and fact and that consolidation will thus avoid expense and delay, ret. 1/25/74.(also filed in 73 Civ.5341)	
n.17-74	Filed Pltff's Notices of Depositions ,representative of Industrial-Izadora De Cacao De Tabasco,S.A. ret.2/5/74	
b.5-74	Filed Stip & Order that pltff's Motion to consolidate ret.1/25/74 adjourned to 2/22/74. TYLER,J.	
eb.25-74	Filed Memo End.on Motion to consolidate:Motion to consolidate this cause with related action 73 Civ.5341(HRT) for purposes of pre-trial discovery and related proceedings.So Ordered.TYLER,J (mn)	
22/74	PRE-TRIAL CONFERFNCE HELD BY Tyler J	
22/74	PRE-TRIAL CONFERENCE HELD BY Tyler J	
.28-74m	**Filed Deft.Transportacion Maritima Mexicana S.A:ANSWER to Amended Complaint**	HGP&J
.28-74	**Filed Deft&3d pty Pltff's 3rd Pty Summons&Complaint.**	
7-74	Filed Pltff's will take depositions of the masters & chief officers of Vessels,Campeche,Merida&Jalapa. (also filed in 73Civ.5341)	
4-74	Filed Summons withMarshal's Return.Served Pittston Stevedoring Corp by Mr.R.F.Shiriarello,Pres.on 4/29/74	
2/74	PRE-TRIAL CONFERENCE HELD BY Tyler J	
21-74	**Filed Pltff's Interrogs.**	
7/74	PRE-TRIAL CONFERENCE HELD BY Magistrate Schreiber	
2-74	**Filed Deft&3rd pty Pltff's Answers to Interrogs.**	
22-74	**Filed " " " " Interrogs.**	
-74	Filed Pre-trial Memorandum of 3d pty deft .	
25/74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber	
12-74	Filed Deft.S.S.Campecha Notice of Exam before trial.	
20-74	Filed Pre-trial Memorandum of Pltff ACLI International Inc.	
21-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber	
16-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber	
24-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber	
16-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber	
18-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber	
15-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber	
16/75	Trial contd(from 12/23/74) with NoN-Jury and concluded.Decision reserved.	
6/75	Filed Deft&3rd pty pltff Amended&Suppl proposed findings of fact&conclusions of law.	
5/75	Filed transcript [illegible] dated 1/16/75	

Docket Entries

73 Civ.1297 ACLI INTERNATIONAL ,INC. "s.SS Campeche,etc.et al JUDGE TYLER

D. C. 110 Rev. Civil Docket Continuation Pg.3

DATE	PROCEEDINGS
4-1-75	Filed Pltffs proposed findings of fact and conclusions of law.
4-1-75	Filed Stip&Order that issued of liability as between pltff&defts&3rd pty pltff shall be fixed as to all voyages ,etc.Further stipulated that action entitled as indicated in 73 Civ.5341 be discontinued with respect to 3rd pty deft with ~~xxxxx~~ prejudice and without costs.Tyler,J.
4.1/75	Filed Pltffs amended and suppl.proposed findings of fact.
4/1/75	Filed Proposed findings of fact & conclusions of law submitted on behalf of deft &3rd pty pltff.
4/1/75	Filed Transcript of Record of Proceedings dated 1/16/75
4/1/75	Filed OPINION#42141.Since ACLI asserted no claims directly against Pittston,it follows that 3rd pty complaints against Pittston no longer have any basis must be dismissed.SETTLE JUDGMENT OR JUDGMENTS ACCORDINGLY.Tyler,J. (docketed in 73 Civ.5341)
04-22-75	Filed JUDGMENT- Ordered that the action by pltff. against defts. as well as the third party action by third party pltff. against third party deft. herein is dismissed on the merits. Edelstein, Ch. J. Judgment entered 4-23-75 Clerk mm
4-24-75	Filed transcript of record of proceedings, dated Dec. 23, 1974, Jan 16, 1975.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S. DISTRICT COURT
FILED
APR 1 1975
S.D. OF N.Y.

ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA S.A., dba MEXICAN LINE,

Defendants.

Index No.
73 Civ. 1297
(HRT)

TRANSPORTACION MARITIMA MEXICANA S.A.,

Defendant and Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,

Third Party Defendant.

PRE-TRIAL ORDER

ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

TRANSPORTACION MARITIMA MEXICANA S.A. dba MEXICAN LINE and SMITH AND JOHNSON (SHIPPING) INC.,

Defendants,

Index No.
73 Civ. 5341
(HRT)

TRANSPORTACION MARITIMA MEXICANA S.A.,

Defendant and Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,"

Third Party Defendant.

Counsel for the various parties having conferred with respect to formulation of a pre-trial order pursuant to Rule 16 of the Federal Rules of Civil Procedure, the following actions have been taken:

1. Plaintiff brings this action under Rule 9 (h) of the Federal Rules of Civil Procedure. No dispute exists on this point.

2. Plaintiff, defendant and third party defendant do not require amendment to the pleadings.

3. No dispute exist as to the following facts:

a. The cocoa butter in question was manufactured on the premises of Industrializadora de Cacao de Tabasco at Cardenas, Tabasco, Mexico.

b. The product was trucked to Coatzacoalcos Ver. Mexico where it was loaded aboard the M.V. CAMPECHE.

c. The bill of lading # 20 for 6400 cartons was issued by the carrier, Mexican Line and was issued clean on board under date of July 13, 1968.

d. Of the 6400 cartons, 3668 were stowed in #1 lower hold aft, and 2732 were stowed in #4 tween deck.

e. The vessel departed Coatzacoalcos on July 14 and arrived at Staten Island on July 23, 1968.

4. Reference is made to the pre-trial memoranda of the respective parties with regard to the position on liability and damages, as well as witnesses to be called and exhibits presented.

5. All parties reserve the right to present testimony and offer exhibits not mentioned herein for the purposes of impeachment.

Pre-Trial Order

ISSUES TO BE TRIED

1. Whether the cocoa butter was free of damage upon loading.

2. Whether the cocoa butter was packaged sufficiently to withstand the normal rigors of ocean transit.

3. Whether the cocoa butter was damaged on outturn and if so the amount thereof.

4. Whether the cocoa butter was damaged due to inherent vice.

5. Whether the carrier gave the proper care and custody to the cargo.

6. Whether the carrier was sufficiently qualified to carry the product.

7. Whether the stevedore contributed to the damage alleged.

Dated: New York, New York

November 14, 1974

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for plaintiff
ACLI INTERNATIONAL, INC.

By: _____
Attorney of Record

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New York, New York
10038

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Attorneys for Defendant and
Third Party Plaintiff
TRANSPORTACION MARITIMA MEXICANA S.A.

By: _____
Attorney of Record

One State Street Plaza
New York, New York

BIGHAM, ENGLAR, JONES & HOUSTON
Attorneys for Third Party
Defendant, PITTSTON STEVEDORING CORPORATION

By: _____
Attorney of Record

99 John Street
New York, New York

A 7

PRE-TRIAL MEMORANDUM OF THIRD-PARTY DEFENDANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL, INC., Plaintiff, -against- S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA S.A. dba MEXICAN LINE, Defendants.	:	73 Civ. 1297 (HRT)
TRANSPORTACION MARITIMA MEXICANA S.A., Defendant and Third-Party Plaintiff, -against- PITTSTON STEVEDORING CORP., Third-Party Defendant.	:	

PRE-TRIAL MEMORANDUM OF THIRD-PARTY DEFENDANT PITTSTON STEVEDORING CORPORATION

I. JURISDICTIONAL STATEMENT

Third-party defendant, Pittston Stevedoring Corporation does not contest the jurisdiction of this Court, jurisdiction being based on the General Maritime Law, diversity of citizenship and the relief demanded is in excess of $10,000.

II. AMENDMENTS TO PLEADINGS

Third-party defendant does not at this time wish to amend its pleadings.

III. UNDISPUTED FACTS

In May and July, 1968, two shipments of cocoa

butter were shipped from Coatzoacoalcos, Mexico to New York, aboard the M/V "CAMPECHE", Maritima Mexicana, S.A. Parts of these cargoes of cocoa butter were discharged in New York.

IV. FACTUAL POSITION

Third-party defendant contends that if the cocoa butter arrived in New York in a damaged or contaminated condition as contended by the plaintiff, such damage or contamination was not caused by the negligence, fault, want of care or breach of warranty on the part of the third-party defendant, or by its agents, servants, officers or employees, or by any person or persons for whose acts or omissions it is responsible or liable. Any shortage, loss and/or damage to the shipment described in the complaint, was due to causes for which the third-party defendant is not liable or responsible by virtue of the provisions of the Carriage of Goods by Sea Act, approved April 16, 1936, and/or the Harter Act, and/or applicable tariffs, and or the provisions of the applicable bills of lading and/or the Teneral Maritime Law.

Third-party defendant contends that it performed its work in a safe, proper, prudent and workmanlike manner; that it accordingly is not liable to indemnify defendant and third-party plaintiff Transportacion Maritime Mexicana S.A.; that both cargoes of cocoa butter arrived in New York

in a damaged and defective condition; that the actions of third-party defendant in no way contributed thereto; and that it did not violate any obligation owed by it to the defendant and third-party plaintiff, either expressed or implied.

V. LIST OF WITNESSES

a. Third-party defendant's gang boss

b. Longshoremen employed by third-party defendant who worked aboard the vessel on the occasions in question

Each of the above are employed by third-party defendant whose principal place of business is at 17 Battery Place, New York, New York.

c. An expert witness to be named prior to trial.

The foregoing is not intended to include those witnesses which may be offered for the purpose of impeachment. Third-party defendant reserves the right to offer those witnesses listed by plaintiff and defendant and those not presently known or available.

VI. EXHIBITS

Depending upon the testimony elicited upon the trial of this action, third-party defendant contemplates offering one or more or a part thereof of the following exhibits:

a. Stevedoring records

b. Payroll records

c. All depositions taken or to be taken in this litigation; documents, photographs and papers marked on those depositions.

The foregoing list of exhibits is not intended to include those which may be offered for the purposes of impeachment. Third-party defendant reserves the right to offer those listed by plaintiff and defendants and those not presently known or available.

VII. TRIABLE ISSUES

The issues are whether the cocoa butter was properly packaged; whether there was inherent vice with respect to the cocoa butter; whether the negligence of the defendant or the unseaworthiness of its vessel caused the damage to the cocoa butter; whether third-party defendant was negligent or breached its warranty of workmanlike service

Respectfully submitted,

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Third-Party Defendant
Pittston Stevedoring Corporation
Office & P. O. Address
99 John Street
New York, New York 10038

PRE-TRIAL MEMORANDUM OF PLAINTIFF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL, INC., Plaintiff, -against- S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA S.A. dba MEXICAN LINE, Defendants.	:	73 Civ. 1297 (HRT)
TRANSPORTACION MARITIMA MEXICANA S.A., Defendant and Third-Party Plaintiff, -against- PITTSTON STEVEDORING CORP., Third-Party Defendant.	:	

PRE-TRIAL MEMORANDUM OF PLAINTIFF
ACLI INTERNATIONAL INC.

I. JURISDICTIONAL STATEMENT

Plaintiff does not contest the jurisdiction of this Court.

II. AMENDMENTS TO PLEADINGS

No amendments to pleading are requested at this time.

III. UNDISPUTED FACTS

In May and June, of 1968, two shipments of cocoa butter were shipped from Coatzacoalcos Mexico to New York aboard the M.V. Campeche and were there discharged. On March 12, 1972, May 13, 1972, June 10, 1972 and August 19, 1972 various shipments of cocoa butter were shipped from

Coatzacoalcos to New York and Philadelphia aboard the vessels Jalapa, Merida, Merida ad Campeche, respectively.

All shipments were carried by the defendant Transportacion Maritima Mexicana, were shipped by the same shipper, and were consigned to plaintiff, ACLI International Inc.

IV. FACTUAL POSITION

Plaintiff contends that all the shipments which are the subject matter of this consolidated action were shipped under clean on board bills of lading and were delivered variously short, damaged and contaminated which resulted in a net loss to plaintiff in the aggregate amount of $43,109.59. It is further contended that defendants and/or third party defendants are liable for the loss under the Carriage of Goods by Sea Act and the Harter Act and the General Maritime Law and that no statutory or common law defenses are available to defendants and third party defendant.

V. LIST OF WITNESSES

1. Plaintiff's claim manager
2. Plaintiff's surveyor
3. Two expert witnesses to be named prior to trial

The foregoing is not intended to include those witnesses which may be offered for the purposes of im-

peachment and plaintiff reserves the right to offer as its own those witnesses listed and/or called by defendant and third party defendant and those not presently known or available.

VI. EXHIBITS

1. Sales contracts, invoices, subrogation receipts, bills of lading, survey reports.

2. All depositions taken or to be taken in this litigation; documents, photographs, and papers marked at those depositions.

The foregoing is not intended to include those exhibits which may be offered for the purposes of impeachment and plaintiff reserves the right to offer as its own those exhibits listed and/or introduced by defendant and third party defendant and those not presently known or available.

VII. TRIABLE ISSUES

The Triable issues are:

1. Whether the coca butter was properly cared for while in the custody of the defendants and third party defendant.

2. Whether the coca butter was properly packaged.

3. Whether the coca butter was subject to inherent vice.

4. Whether the defendant had the proper experties to carry the cocoa butter.

5. Whether the carrying vessels were "cargo worthy" for this particular cargo.

6. Whether the third party defendant breached its warranty of workmanlike service.

Respectfully submitted,

HILL RIVKINS CAREY LOESBERG & O'BRIEN
Attorneys for Plaintiff
96 Fulton Street
New York, New York 10038

PRE-TRIAL MEMORANDUM OF THIRD-PARTY PLAINTIFF

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

ACLI INTERNATIONAL, INC.,

Plaintiff,

- against -

S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA S.A. dba MEXICAN LINE,

Defendants.

----------x 73 Civ. 1297 (HRT)

TRANSPORTACION MARITIMA MEXICANA S.A.,

Defendant and Third Party Plaintiff,

- against -

PITTSTON STEVEDORING CORPORATION,

Third Party Defendant.

----------x

DEFENDANT AND THIRD PARTY PLAINTIFF'S PRE-TRIAL MEMORANDUM

I. JURISDICTIONAL STATEMENT

Plaintiff has invoked the admiralty/maritime jurisdiction of this Court under Rule 9(h) of the Federal Rules of Civil Procedure. Defendant and third party plaintiff does not

challenge the jurisdiction of the Court as to plaintiff's claim. The third party action is one for indemnity and/or contribution over which this Court has jurisdiction.

II. AMENDMENTS TO PLEADINGS:

Defendant and third party plaintiff does not, at this time, seek to amend the pleadings.

III. DEFENDANT AND THIRD PARTY PLAINTIFF WILL STIPULATE TO THE FOLLOWING:

(a) That at all times mentioned it was the owner and operator of the m/s Campeche.

(b) That defendant and third party plaintiff issued Bill of Lading No. 10 dated May 18, 1968 covering a shipment of 2,500 cartons of cocoa butter on Voyage 61 NB of the m/s Campeche from Coatzacoalcos to New York.

(c) Defendant and third party plaintiff issued Bill of Lading No. 20 dated July 13, 1968 covering a shipment of 6,400 cartons of cocoa butter on Voyage 63 of the m/s Campeche from Coatzacoalcos to New York.

(d) Both shipments were discharged by third party defendant at Pier 20, Staten Island, New York.

IV. CONTENTIONS:

Defendant and third party plaintiff contends that it was not negligent with respect to the shipments involved and that the m/s Campeche was not unseaworthy. Defendant and third party plaintiff further contends that any damage to these shipments resulted from inherent vice of the cargo and/or insufficient packaging thereof. If damage resulted from any other cause it was from the improper handling of said cargo by third party defendant.

V. Defendant and third party plaintiff will call some or all of the following witnesses, if available, at the trial:

(a) Ruben Villegas Dominguez

(b) Emilio Espana Krauss (expert witness)

(c) Representative of K.H. McClure & Co., Inc.

(d) Jose Ruiz

(e) Mario Ruiz

(f) Gerardo Sanchez

(g) Jaime Rosique

(h) Capt. William Wheeler (expert witness)

(i) Surveyors

Defendant and third party plaintiff reserves the right to identify additional witnesses whose testimony may become relevant and/or necessary up to and during the trial of this action.

VI. Depending upon the testimony adduced at the trial, defendant and third party plaintiff will offer some or all of the following exhibits, if available:

(a) Exhibits marked at depositions heretofor taken

(b) Deck logs of the m/s Campeche (A-1)

(c) Cargo stowage plan for the voyages in question (A-2 and A-3)

(d) Stowage lists for the voyages in question (A-4, A-5)

(e) Capacity plan of the vessel (A-6)

(f) Stevedoring contract (A-7)

(g) Stevedoring bills submitted by third party defendant (A-8)

(h) Sample cocoa butter container (A-9)

Defendant and third party plaintiff reserves the right to offer additional exhibits up to and during the trial of this action.

VII. The issues to be tried include liability in terms of unseaworthiness, negligence, indemnity, and the extent and nature of damages, if any, sustained by plaintiff.

Respectfully submitted,

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant
and Third Party Plaintiff
One State Street Plaza
New York, New York 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S.A., dba MEXICAN LINE,

Defendants,

TRANSPORTACION MARITIMA MEXICANA S.A.,

Defendant and Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,

Third Party Defendant.

Index No. 73 Civ. 1297 (HRT)

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ACLI INTERNATIONAL, INC., files the following as its proposed findings of fact and conclusions of law:

PROPOSED FINDINGS OF FACT

1. This is a cause of action in the admiralty and maritime jurisdiction of the court within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure.

2. Plaintiff, ACLI INTERNATIONAL, INC., is a corporation organized and existing under the laws of the

State of New York and at all material times owned the cargo by purchase from Industrializadora de Cacao de Tabasco S.A. .

3. Defendant, TRANSPORTACION MARITIMA MEXICANA,S.A., a corporation organized and existing under the laws of Mexico. The M.V. CAMPECHE, is owned, operated and managed by defendant, TRANSPORTACION MARITIMA MEXICANA, S.A. .

4. The dimensions of the M.V. CAMPECHE, which carried the cargo which is the subject matter of this action, according to Lloyds' Registry of Shipping are as follows:

Length (BP)	330 ft. 0 in.	dwt 3700
Breadth (moulded)	47 ft. 0 in.	date of build 1954
Depth (moulded)	19 ft. 0 in.	# of holds 4
Tonnage gross	2312	# of hatches 4
Tonnage net	1142	

5. The cocoa butter which is the subject matter of this action was manufactured in the town of Cardenas, Tabasco, Mexico at the plant of Industrializadora de Cacao de Tabasco S.A. from whence it was trucked to the loading port of Coatzacoalcos.

6. Trucker's receipts indicate that the cargo carried under bill of lading number 20 dated July 13, 1972 was picked up from the shipper's warehouse between July 10, 1972 and July 12, 1972.

7. The shipper's warehouse at Cardenas is maintained at a maximum temperature of 77°F (25°C) and

the cargo was held at the shipper's warehouse until no more than 36 hours before the carrying vessel is due to arrive for loading at Coatzacoalcos.

8. All truck shipments were carried during darkness in order to avoid the heat of the day.

9. Driving time between Cardenas and Coatzacoalcos is approximately 2 hours.

10. The melting point of cocoa butter is in the 96°F - 98°F range (35.2°C - 36.3°C,.

11. On July 13, 1968, the shipment of cocoa butter was delivered to defendant, TRANSPORTACION MARITIMA MEXICANA, S.A., for carriage from Coatzacoalcos to New York and was accepted for shipment by a duly authorized agent of defendant, TRANSPORTACION MARITIMA MEXICANA, S.A., in consideration of agreed freight and pursuant to the terms of bill of lading number 20 dated July 13,1968.

12. At the time of loading aboard the vessel, defendant, TRANSPORTACION MARITIMA MEXICANA, S.A., issued a "clean onlboard" bill of lading signed for the master by defendant, TRANSPORTACION MARITIMA MEXICANA, S.A.'s general agent at Coatzacoalcos.

13. The cargo shipped under bill of lading number 20 during July of 1968, 3668 cartons were stowed in the number 1 lower hold aft and 2732 cartons were stowed in the number 4 tween deck forward and all cargo was loaded from trucks alongside.

14. The cocoa butter was sealed in polyethylene bags inside a single wall fibre board carton measuring approximately 7 1/2 inches by 14 inches by 15 inches. The net weight of each cargon was 50 lbs. The inner liner of polyethylene was heat-sealed and the outer carton was stapled at one end and taped at both ends. The packaging of the cocoa butter was customarily used for approximately 15 years and sufficient to withstand the normal rigors of ocean transit.

15. It is not customary in the trade to carry cocoa butter in refrigerated compartments.

16. During a deposition of defendant, TRANSPORTACION MARITIMA MEXICANA, S.A., by the chief officer of the CAMPECHE on the July 1968 voyage the following facts were admitted, all ~~[illegible]~~ corroborated by the live testimony of the same witness at trial:

A. The July 1968 voyage was the first in which he had come into contact with cocoa butter (P. 8, transcript of deposition of Ruben Villejas taken July 23, 1974).

B. He had no special instructions from defendant, TRANSPORTACION MARITIMA MEXICANA S.A., as to whether any special care was required in carrying cocoa butter. (P. 8 & 9)

C. He did not know the melting point of cocoa butter. (p. 22)

D. No hold temperature readings were taken during the voyage. (p 24)

E. That no rough weather was encountered on the voyage. (pp 22, 23)

F. No humidity readings were taken of the cargo holds although it should have been done. (pp 24+25)

G. He did not know the stowage factor of cocoa butter. (p. 25)

H. That during the voyage the weather averaged about 75°F. (p. 26)

I. That the damage was a result of improper stowage. (pp. 41,42,55,60,61)

J. A daily inspection of the cargo holds was not performed. (p 51)

K. HAD THE CARGO BEEN STOWED IN THE #1 LOWER HOLD IN THE #3 LOWER HOLD, THE DAMAGE WOULD NOT HAVE OCCURRED. (p. 55)

17. On discharge 1400 cartons of the 6400 cartons shipped outturned stained, soft,, short and contaminated.

18. The damage was not a result of inherent vice of the cargo but rather was caused by the improper stowage

of the cargo and the negligent care, custody and control of the cargo by the defendants compounded by the third party defendant stevedore by exposing the discharged cargo to the effects of the heat and sum during the months of July and August.

19. The shipment under bill of lading 10 in May referred to in the Complaint will abide by stipulation the result of the trial of the July shipment under bill of lading 20.

PROPOSED CONCLUSIONS OF IAW

1. The M.V. CAMPECHE, was engaged in the common carriage of goods for hire.

2. Bill of lading number 20 dated July 13, 1968 by M.V. CAMPECHE is subject to the provisions of COGSA and the plaintiff is a holder in due course of the bill.

3. The shipment of cocoa butter, having been delivered in good order and condition to the M.V. CAMPECHE and defendants at Coatzacoalcos, the failure of the ship and defendants to deliver the cargo at destination in the same good order and condition establishes ACLI INTERNATIONAL, INC.'s prima facie case against defendants. Levatino Co. v. SS President Hayes 231 F. Supp. 307 (S.D.N.Y. 1964).

4. The ocean carrier is a bailee entrusted with the shipper's goods. Discharge of that duty is

peculiarly within the carrier's control and the facts and circumstances upon which the carrier may rely for relief from that duty are peculiarly within his knowledge. As a result, the law imposes upon the carrier the burden of showing that he is entitled to rely upon one of the statutory exceptions provided by COGSA. Schnell v. The Vallescur 293 U.S. 296 (1934). This the defendants have failed to do.

5. Defendants have failed "to exercise due diligence to (a) make the ship seaworthy; (b) properly man, equip, and supply the ship" and (c) make the holds... in which the goods are carried, fit and safe for their reception, carriage and preservation": 46 U.S.C. §1303 (1)

6. Defendants were negligent in the care, custody and control of the cargo.

7. A carrier is obliged to know the characteristics of the cargo it is carrying and to make the necessary seafaring provisions for its safe ocean carriage. Levatino Co. v. SS HELAS 1966 A.M.C. 40 (S.D.N.Y. 1966).

8. Although a carrier is not obliged to accept perishable cargo, once it does, it is charged with knowledge of the cargo's perishable characteristics and has the duty to provide such care as the cargo's character requires. Levatino Co. vs. SS President Hayes 1964 A.M.C. 1247 (S.D.N.Y. 1964).

9. The defendant did not discharge the cargo to a

fit wharf at the port of destination within the meaning of the Harter Act as it failed to take measures to protect the cargo from the effects of the weather. Levatino Co. v. SS President Hayes 1964 A.M.C. 1247 (S.D.N.Y. 1964).

10. The M.V. CAMPECHE and defendants are liable to plaintiff, ACLI INTERNATIONAL, INC., for its damages which total $15,219.29 plus interest and costs.

Dated: New York, New York
November 18, 1974

HILL, RIVKINS, CAREY, LOESBERG
& O'BRIEN
Attorneys for Plaintiff
ACLI INTERNATIONAL INC.

BY: _____
Attorney of Record

96 Fulton Street
New York, New York
10038

THIRD-PARTY DEFENDANT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL, INC. Plaintiff against TRANSPORTACION MARITIMA MEXICANA S.A. d/b/a MEXICAN LINE and SMITH AND JOHNSON (SHIPPING) INC. Defendants	73 Civ. 5341 (HRT) PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW
TRANSPORTACION MARITIMA MEXICANA S.A. Defendant and third-party plaintiff against PITTSTON STEVEDORING CORP. Third-party Defendant	

THIRD-PARTY DEFENDANT PITTSTON STEVEDORING CORP.'S PROPOSED FINDINGS OF FACTS

1. Plaintiff, Acli International, Inc., at all times material herein, was and now is a domestic corporation with an office and place of business at 110 Wall Street, New York, New York.

2. Defendant and third-party plaintiff, Transportacion Maritima Mexicana S.A., was, and now is, a foreign corporation or other business entity, with an office and place of business at Avenida de los Insurgentes 432, Piso 3, Mexico D.F. Mexico.

3. Defendant and third-party plaintiff, Transportacion Maritima Mexicana S.A., was at all relevant times, the owner andoperator of the M/V "Campeche", a vessel engaged in the carriage of cargo by sea for hire.

4. Third-party defendant, Pittston Stevedoring Corp., was a domestic corporation with an office and place of business at 17 Battery Place, New York, New York.

5. In May and July 1968, defendant and third-party plaintiff's vessel, M/V "Campeche", arrived at Pier 20, Staten Island, New York, carrying, among other things, a cargo of coco butter.

6. Third-party defendant, Pittston Stevedoring Corp., had been engaged to assist in the discharging of the cargo of coco butter at Pier 20, Staten Island, New York.

7. On each of the above mentioned occasions, when the hatch containing the coco butter was opened, the coco butter was found to be in a melted, damaged and otherwise defective condition.

8. That the damage to the coco butter on each of the above mentioned occasions, occurred prior to the time that third-party defendant Pittston Stevedoring Corp. commenced its obligations under the discharging agreement.

9. That the damage to the coco butter, on each of the above mentioned occasions, occurred while the cargo was still on board the vessel.

10. That the actions of third-party defendant Pittston Stevedoring Corp. in no way contributed to the damage and defective condition of the cargo.

THIRD-PARTY DEFENDANT PITTSTON STEVEDORING CORP.'S PROPOSED CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter of this action by reason of diversity of citizenship and also under its admiralty and maritime jurisdiction. The amount in controversy exceeds $10,000 exclusive of interests and costs.

2. The Court finds that there is an insufficiency of credible evidence to satisfy it by a preponderance of proof. That either third-party defendant was negligent or that its acts in any way proximately contributed to the occurrence of the subject damage.

3. The Court finds that there is an insufficiency of credible evidence to satisfy it by a preponderance of proof. That third-party defendant breached its guarantee of performing its work in a careful and workmanlike manner.

4. Third-party defendant Pittston Stevedoring Corp. has clearly established to the satisfaction of this Court by a preponderance of a credible evidence that defendant and third-party plaintiff, Transportacion Maritima Mexicana S.A., by its own negligence caused the damages complained of.

5. Said negligence of defendant and third-party plaintiff Transportacion Maritima Mexicana S.A. which proximately caused the damages is a complete bar to any recovery over against third-party defendant Pittston Stevedoring Corp.

Dated: New York, New York
1974.

_____

U.S.D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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ACLI INTERNATIONAL, INC.,

Plaintiff,

- against -

S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S.A., dba MEXICAN LINE,

Defendants,

----------x 73 Civ. 1297 (HRT)

TRANSPORTACION MARITIMA MEXICANA, S.A.,

Defendant and Third Party Plaintiff,

- against -

PITTSTON STEVEDORING CORPORATION,

Third Party Defendant.

----------x

AMENDED AND SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RESPECTFULLY SUBMITTED ON BEHALF OF DEFENDANT AND THIRD PARTY PLAINTIFF

FINDINGS OF FACT

1. Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New York.

2. Defendant and third party plaintiff,

Transportacion Maritima Mexicana, S.A. (hereinafter referred to as Mexican Line), is a corporation organized and existing under and by virtue of the laws of the Republic of Mexico, having its principal office in Mexico City. At all material times it was the owner and operator of the m/s Campeche.

3. Third party defendant, Pittston Stevedoring Corp., was and still is a corporation engaged in stevedoring and terminal operations in the Port of New York and, at all material times, was the stevedore and terminal operator at Pier 20, Staten Island, New York.

4. On or about July 13, 1968, the m/s Campeche called at the Port of Coatzacoalcos, Mexico, where she loaded 6,400 cartons of cocoa butter. 3,668 cartons were stowed in the after end of the vessel's No. 1 lower hold and the remaining 2,732 cartons were stowed in the No. 4 'tween deck. The entire shipment was carried under Bill of Lading No. 20, dated July 13, 1968.

5. The cocoa butter in question was manufactured at the plant of the shipper, Industrializadora de Cacao de Tabasco S/A, located at Cardenas, some 60 miles inland from Coatzacoalcos. In a semi-liquid state, the cocoa butter was poured into polyethylene bags which, in turn, were placed in cardboard cartons. The cartons were then stored in the shipper's warehouse to await shipment to the coast (deposition of Rosique, plaintiff's Exhibit 22,

p. 17). Each carton, when filled, weighed approximately 50 lbs.

6. In the shipper's warehouse, the cartons were stacked no more than 8-10 high because, according to Mr. Rosique, if they were stacked any higher they would be "squash" and create pressure on the contents (Id, p.p. 17, 23). However, the shipper's carton was imprinted with the materially misleading instruction that they could be stacked up to 30 high (Id, p. 19).

7. The same carton, a sample of which was marked in evidence, (plaintiff's Exhibit 16), was used by the shipper for local shipment as well as for export (Rosique deposition p. 18).

8. Despite the shipper's testimony that the polyethylene bags were heat-sealed (Id, p. 15), the sample produced at the trial (plaintiff's Exhibit 16) was not so sealed but, rather, its open end was tied with a piece of string.

9. Upon notification that the Campeche was due at Coatzacoalcos, the shipper arranged for unrefrigerated trucks to transport the cartons of cocoa butter to the port. There was testimony that these trucks generally deliver the commodity to the pier between 8-10 days before loading (deposition of Ruiz, plaintiff's Exhibit 23, p. 15), while documents submitted by the plaintiff purport to show that the trucks which delivered the shipment in question

began arriving at Coatzacoalcos on July 10, 1968, with the last such delivery on July 12, 1968 (24-72 hrs. prior to loading). Despite the shipper's testimony that the cocoa butter is trucked no more than 36 hours prior to a vessel's arrival (Rosique deposition, p. 11), it is significant that provision was made for re-cartonizing on the pier if the cargo remained there more than 8 days (Id, p. 28).

10. The storage facilities at Coatzacoalcos are owned by the Mexican Government (Id, p. 32; Ruiz deposition, p. 17) and the interior of these facilities are not temperature-controlled (Rosique deposition, p. 25). The temperature in the warehouse reaches 40° Centigrade, or 104° Fahrenheit, in the Summer (Id, p. 25, 32; Ruiz deposition, p. 17). There was expert testimony that the Government warehouse does not provide suitable storage for cocoa butter - the melting point of which is 30-32° Centigrade or 86-90° Fahrenheit (testimony of Sr. Espana; Pharmacopoeia of the United States, 12th Revision, 1942). The shipper, himself, agreed that these facilities are not adequate (Rosique deposition p. 14).

11. The shipper paid all storage charges at Coatzacoalcos and the vessel did not assume custody until the cargo was alongside (Ruiz deposition, p. 7, 33; deposition of Villegas, plaintiff's Exhibit 24, p. 40).

12. Plaintiff claims to have experienced losses since it began importing cocoa butter from Industrializadora

de Cacao de Tabasco S/A, with damage ranging from 25% to 75% per shipment (defendant's Exhibit F). On the suspicion that melting "had a good head start at the port of loading", plaintiff engaged the services of a private investigative company to ascertain whether the cocoa butter was stored "in excessively hot shed areas" at Coatzacoalcos (Ibid).

13. Sr. Emilio Espana Krauss testified at the trial on behalf of defendant and third party plaintiff. He is the owner and manager of Industrial Soconusco S.A. of Mexico City, another manufacturer and shipper of cocoa butter from Mexico to the United States aboard Mexican Line vessels. Sr. Espana has spent a lifetime in his business and is thoroughly familiar with the processing and packaging of cocoa butter. He gave a detailed description of the proper method of processing this product for export shipment. At his factory in Mexico City, the cocoa butter, in liquid form, is stirred in vats to eliminate all air bubbles. When a critical point is reached, it is poured into moulds and permitted to harden into a predetermined shape, at room temperature. This procedure has the effect of drawing off excess heat and air pockets from the product. The block of cocoa butter is then placed in a polyethylene bag, the open end of which is heat-sealed. Three such bags are placed in the carton used by Sr. Espana for export shipment. These cartons

are re-enforced at all corners, have an extra, interior cardboard wall, overlaping flaps to strengthen the bottom surface, and are bound on the outside with metal straps. All of these features significantly enhance the structural integrity of the carton. While Sr. Espana's cartons are transported from Mexico City to Vera Cruz, a greater distance than from Cardenas to Coatzacoalcos, the route followed by his trucks is at a relatively high altitude and, therefore, much cooler. Sr. Espana's cartons do not remain at Vera Cruz for any appreciable length of time and are loaded directly from the trucks onto Mexican Line vessels.

Mr. Kenneth H. McClure, consignee of Sr. Espana, testified that he has received shipments of cocoa butter from the latter for over 20 years, all arriving in good order and condition at New York (see also defendant's Exhibit M).

Sr. Espana's export carton, a sample of which was admitted in evidence together with its components (defendant's Exhibits I, J, K, L), is obviously superior to that used by plaintiff's shipper. Sr. Espana expressed the opinion that, based upon his many years experience in the business, plaintiff's sample carton, Exhibit 16, was not adequate for export shipment. In this regard, it is noteworthy that a substantial portion of the damages claimed by plaintiff on the subject shipment is attributable

to the cost of re-cartonizing the cocoa butter following discharge at New York.

14. From all of the foregoing, it appears that the subject cartons of cocoa butter remained in the storage facilities at Coatzacoalcos for an average of two or more days, at temperatures well in excess of the melting point of the commodity, before being loaded aboard the m/s Campeche on July 13, 1968. Under such conditions, a considerable amount of melting took place prior to loading but, because of the polyethylene bags and the fact that the cartons were only stacked 8 high (Ruiz deposition, p. 31), this condition was not discernable at the time (deposition of Villegas, plaintiff's Exhibit 24, p. 30).

15. At the loading port, the cartons were placed by hand into nets, brought aboard the vessel and stowed in the compartments previously mentioned. No hooks were used by the loading longshoremen (deposition of Villegas, p. 21). As stowed, the tiers of cartons were interspaced, at appropriate levels, with dunnage (testimony of former Chief Officer, Ruben Villegas Dominguez; Deposition of Ruiz, plaintiff's Exhibit 23, p. 35). Because of the relative heights of the two cargo compartments and the number of cartons in each, those in the No. 1 lower hold were necessarily stowed higher than those in the No. 4 'tween deck, in excess of 8 high and

probably closer to twice that many (compare the testimony of Chief Officer Villegas and the vessel's capacity plan, defendant's Exhibit T; see also Ruiz deposition, p. 35). The cartons in the No. 1 lower hold were stowed on top of drums, which were approximately 3 feet high, and relatively small lots of horse hair and dried flies. Thus, while the Chief Officer's estimate of 18-22 cartons high was probably off, the general configuration of the stow, as seen on the cargo stowage plan (defendant's Exhibit O), shows the height of the cocoa butter in No. 1 lower hold to be substantially greater than that in No. 4 'tween deck.

16. There was evidence submitted that the shipper issued an oral instruction to the carrier that the goods were to be carried below the water line. No written confirmation of such instruction was offered. In any event, since damage was confined to the portion of the shipment stowed in the No. 1 lower hold and did not involve the cocoa butter carried in No. 4 'tween deck, such instruction is irrelevant to the issues here presented. No other special instructions were given by the shipper.

17. During the northbound voyage of the Campeche, temperature readings were not taken in the vessel's cargo hatches. However, ventilation was introduced in accordance with the prevailing custom (testimony of Chief Officer Villegas; ship's log - defendant's Exhibit N).

18. The Campeche's first discharge port on the northbound voyage was Philadelphia. While some cargo was discharged from hatch No. 1, the lower hold was not opened at that time. The vessel then proceeded to Pier 20, Staten Island, New York, arriving on July 23, 1968 (Ibid).

19. When the discharge of cartons of cocoa butter from No. 1 lower hold was begun by employees of third party defendant, the top tiers were intact but, as the work progressed, the lower tiers were noted to be damaged. This damage was most prevalent in the lowest portion of the stow. Cartons were crushed; melted cocoa butter had seeped out of the polyethylene bags, staining its own and adjacent cartons. Further, the melted cocoa butter had seeped down in and around the drums stowed at the bottom of the lower hold. Most significantly, however, the cocoa butter which had seeped in and around the drums had hardened again.

20. As there was no damage to the portion of the shipment in No. 4 'tween deck and since the cocoa butter which had seeped among the drums in the No. 1 lower hold had re-hardened, it appears that the melting did not take place while the cargo was in stow but occurred prior thereto.

21. The damage in question was confined to the lower tiers of cartons in the No. 1 lower hold. This portion of the stow was subjected to the greatest pressure,

due to the weight of the cartons above and the movement of the vessel while at sea. As the cocoa butter was no longer in a solid state at the time of loading, it could lend no strength to the cartons in which it was packaged. Accordingly, the lower cartons could not withstand the pressure from above and collapsed. With the full weight then on the polyethylene bags in the lower portion of the stow, they, too, burst and the already melted cocoa butter leaked out. While plaintiff offered the testimony of a laboratory technician as to the results of a recent test conducted on a sample carton of cocoa butter, these results are not significantly probative. According to the witness, the carton was subjected to 1,000 lbs. pressure, evenly applied over the entire surface of the carton and, thereafter, heat was introduced. No record was made of atmospheric conditions at the site of the test nor was any attempt made to simulate the "working" of a vessel at sea.

22. The evidence presented shows that the cartons, in which the cocoa butter was packaged, were insufficient to withstand the rigors of ocean transport and were inscribed with printed instructions which were misleading to the carrier.

[Depending upon the Court's determination of the shipowner's initial liability, the following additional proposed finding is respectfully submitted: 22a. The

evidence supports a finding that third party defendant's discharging longshoremen used hooks in handling the cargo causing damage. Still further damage was caused by the third party defendant in leaving a portion of the shipment on the open stringpiece of Pier 20, exposed to 90° + temperatures.]

23. Total damage claimed is divided between the cost of re-packing and re-conditioning and a portion of the cocoa butter destroyed as unfit. As to the shipment carried on Campeche Voyage 61 N.B., May, 1968, no mention is made in plaintiff's surveyor's report (defendant's Exhibit A) of the need to re-cartonize 1,705 cartons at a cost of $6,564.25, a charge allegedly paid by plaintiff to S. A. Wald for such work.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.

2. The carrier exercised reasonable care in the handling of the cargo while in its custody.

3. The cargo as to which damage is claimed was properly stowed aboard the m/s Campeche.

4. The evidence shows that the melting of the cargo prior to loading, 46 U.S.C. § 1304(2)(m), J. Howard Smith, Inc. v. S.S. Maranon, 501 F.2d 1275 (2 Cir., 1974),

coupled with insufficient packaging, was the cause of damage to the subject shipment, 46 U.S.C. § 1304(2)(n); LaFortune v. S.S. Irish Larch, 503 F.2d 952 (2 Cir., 1974). As noted in Modern Export Packing, published by the U. S. Department of Commerce, p. 93, and as to which plaintiff's witnesses readily agreed:

> "Resistance to compression, for example, is a relatively minor factor where the contents are of such a nature as to support the walls of the container, or the interior packaging is so designed as to furnish necessary support. Where these factors are not present, the shipper must be certain that the container being used has sufficient resistance to compression to prevent it from caving in when it is placed in the bottom tier of a pile of boxes in a warehouse, pier, or steamship hold . . . ."

This, the shipper obviously failed to do.

5. Plaintiff and defendant have stipulated that the Court's determination of the issue of liability herein shall be binding as to the shipments of cocoa butter which are the subject of 73 Civ. 5341.

Respectfully submitted,

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant
and Third Party Plaintiff

/s/ Thomas F. Duclaux

By Thomas F. Duclaux
A Member of the Firm
One State Street Plaza
New York, New York 10004

PLAINTIFF'S AMENDED AND SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL, INC., Plaintiff, -against- S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S.A., dba MEXICAN LINE, Defendants,	Index No. 73 Civ. 1297 (HRT)
TRANSPORTACION MARITIMA MEXICANA S.A., Defendant and Third Party Plaintiff, -against- PITTSTON STEVEDORING CORPORATION, Third Party Defendant.	AMENDED AND SUPPLEMENTAL PROPOSED FINDINGS OF FACT

ACLI INTERNATIONAL, INC., files the following as its amended and supplemental proposed findings of fact:

1. This is a cause of action in the admiralty and maritime jurisdiction of the court within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure.

2. Plaintiff, ACLI INTERNATIONAL, INC., is a corporation organized and existing under the laws of the State of New York and at all material times owned the cargo by purchase from Industrializadora de Cacao de Tabasco S.A. .

3. Defendant, TRANSPORTACION MARITIMA MEXICANA, S. A., is a corporation organized and existing under the laws of

Mexico. The M.V. CAMPECHE, is owned, operated and managed by defendant, TRANSPORTACION MARITIMA MEXICANA S.A.,

4. The dimensions of the M.V. CAMPECHE, which carried the cargo which is the subject matter of this action, according to Lloyds' Registry of Shipping are as follows:

Length (BP)	330 ft. 0 in.	dwt 3700
Breadth (moulded)	47 ft. 0 in.	date of build 1954
Depth (moulded)	19 ft. 0 in.	# of holds 4
Tonnage gross	2312	# of hatches 4
Tonnage net	1142	

5. The cocoa butter which is the subject matter of this action was manufactured in the town of Cardenas, Tabasco, Mexico at the plant of Industrializadora de Cacao de Tabasco S.A. from whence it was trucked to the loading port of Coatzacoalcos. (Plaintiff's Exhibit 22)

6. Trucker's receipts, (Plaintiff's Exhibit 22A), indicate that the cargo carried under bill of lading number 20 dated July 13, 1972 was picked up from the shipper's warehouse between July 10, 1972 and July 12, 1972.

7. The shipper's warehouse at Cardenas is maintained at a maximum temperature of 77°F (25°C) and the cargo was held at the shipper's warehouse until no more than 36 hours before the carrying vessel was due to arrive for loading at Coatzacoalcos. (Deposition of Rosique, Plaintiff's Exhibit 22, page 11.)

8. All truck shipments were carried during darkness in order to avoid the heat of the day. (Deposition of Rosique, Plaintiff's Exhibit 22 page 11.)

9. Driving time between Cardenas and Coatzacoalcos is approximately 2 hours. (Deposition of Rosique, Plaintiff's Exhibit 22, page 12.)

10. The trucks which carried the cocoa butter as well as the concrete warehouses in which some of it was stored prior to loading were covered to protect the cartons from the sun's radiation. (Deposition of Rosique, Plaintiff's Exhibit 22 pp. 31, 32)

11. The maximum temperature at Coatzacoalcos between July 10 and July 13, 1968 was 87.8°F or 31°C. (Plaintiff's Exhibit 25)

12. The melting range of cocoa butter is 93° - 98°F. (Testimony of Sidney Kahan)

13. The vessel's general agent at the port of loading was instructed by the shipper "... not to load to (SIC) high in a close (SIC) place." (Deposition of Jose Ruiz, Plaintiff's Exhibit 23, pp. 27, 28)

14. The cartons of cocoa butter were stacked in the warehouse at Coatzacoalcos no more than 8 high while awaiting shipment. (Deposition of Jose Ruiz, Plaintiff's Exhibit 23, pp. 31, 32)

15. The maximum amount of cartons in a vertical tier

on the Mexican Line ships was 20 cartons. (Plaintiff's Exhibit 23, p. 35)

16. The cartons of cocoa butter are sufficient to withstand the overstow pressure of the equivalent of 20 additional cartons at 90°F for a period of 10 days. (Testimony of Mr. Goldenberg and Plaintiff's Exhibit 26)

17. On July 13, 1968, the shipment of cocoa butter was delivered to defendant, TRANSPORTACION MARITIMA MEXICANA, S.A., for carriage from Coatzacoalcos to New York and was accepted for shipment by a duly authorized agent of defendant, TRANSPORTACION MARITIMA MEXICANA, S.A., in consideration of agreed freight and pursuant to the terms of bill of lading number 20 dated July 13, 1968. (Plaintiff's Exhibit 10)

18. At the time of loading aboard the vessel, defendant, TRANSPORTACION MARITIMA MEXICANA, S.A., issued a "clean on board" bill of lading signed for the master by defendant, TRANSPORTACION MARITIMA MEXICANA, S.A.'s general agent at Coatzacoalcos. (Plaintiff's Exhibit 10)

19. The cargo shipped under bill of lading number 20 during July of 1968, 3668 cartons were stowed in the number 1 lower hold aft and 2732 cartons were stowed in the number 4 tweer deck forward and all cargo was loaded from trucks alongside. (Plaintiff's Exhibit 23A)

20. The cocoa butter was sealed in polyethylene bags inside a single wall fibre board carton measuring approximately 7 1/2 inches by 14 inches by 15 inches. The net weight of each carton was 50 lbs. The inner liner of

polyethylene was heat-sealed and the outer carton was stapled at one end and taped at both ends. The packaging of the cocoa butter was customarily used for approximately 15 years and sufficient to withstand the normal rigors of ocean transit. (Plaintiff's Exhibit 16)

21. It is not customary in the trade to carry cocoa butter in refrigerated compartments. (Testimony of Lovitts)

22. During a deposition of defendant, TRANSPORTACION MARITIMA MEXICANA, S.A., by the chief officer of the CAMPECHE on the July 1968 voyage the following facts were admitted, and were corroborated during the live testimony of the same witness at trial: (Plaintiff's Exhibit 24)

A. The July 1968 voyage was the first in which he had come into contact with cocoa butter.(P. 8, transcript of deposition of Ruben Villegas taken July 23, 1974).

B. He had no special instructions from defendant, TRANSPORTACION MARITIMA MEXICANA S.A., as to whether any special care was required in carrying cocoa butter. (p. 8 & 9)

C. He did not know the melting point of cocoa butter. (p. 22)

D. No hold temperatures readings were taken during the voyage. (p. 24)

E. That no rough weather was encountered on the voyage. (pp. 22, 23)

F. No humidity readings were taken of the cargo holds although it should have been done. (pp. 24 and 25)

G. He did not know the stowage factor of cocoa butter. (p.25)

H. That during the voyage the weather averaged about 75°F. (p.26)

I. That the damage was a result of improper stowage. (pp. 41, 42, 55, 60, 61)

J. A daily inspection of the cargo holds was not performed. (p. 51)

K. Had the cargo in the # 1 lower hold been stowed in the # 3 lower hold, the damage would not have occurred. (p. 55)

23. On discharge 1400 cartons of the 6400 cartons shipped outturned stained, soft, short and contaminated. (Testimony of Lovitts, Decket, Wald)

24. The damage was not a result of inherent vice of the cargo but rather was caused by the improper stowage of the cargo and the negligent care, custody and control of the cargo by the defendants compounded by the third party defendant stevedore by exposing the discharged cargo to the effects of the heat and sun during the months of July and August.

25. The shipment under bill of lading 10 in May referred to in the Complaint will abide by stipulation the result of the trial of the July shipment under bill of lading 20.

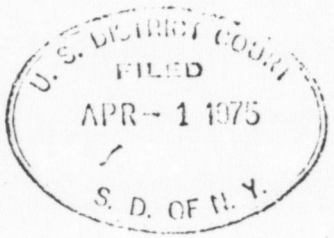
Dated: New York, New York
January 22, 1975.

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for Plaintiff,
ACLI INTERNATIONAL, INC.

BY: _____
Attorney of Record

96 Fulton Street
New York, New York 10038

FINDINGS OF FACT AND CONCLUSIONS OF LAW



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S.A., dba MEXICAN LINE,

Defendants.,

TRANSPORTACION MARITIMA MEXICANA, S.A.,

Defendant and Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,

Third-Party Defendant.

----------X

FINDINGS OF FACT AND CONCLUSIONS OF LAW

73 Civ. 1297 HRT

ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

TRANSPORTACION MARITIMA MEXICANA S.A., dba MEXICAN LINE and SMITH AND JOHNSON (SHIPPING) INC.,

Defendants.,

TRANSPORTACION MARITIMA MEXICANA S.A.,

Defendant and Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,

Third-Party Defendant.

----------X

73 Civ. 5341 HRT

F. W. MEEKER, ESQ. and MARTIN MULROY, ESQ.,
New York City, Attorneys for Plaintiff.

THOMAS F. MOLANPHY, ESQ., New York City,
Attorney for Defendant.

NICHOLAS CAMERA, ESQ., New York City,
Attorney for Third-Party Defendant.

TYLER, D.J.

The bench trial of the issues specifically reserved for resolution in these two cargo damage cases took place on December 23, 1974 and January 16, 1975. The following memorandum is intended to constitute the findings of fact and conclusions of law of the court. Rule 52, F.R.Civ.P.

PRELIMINARY MATTERS

On December 23, 1974, the first day of trial, counsel for the parties stipulated in writing as follows:

1. The issue of liability as between the parties are to be fixed as to all voyages in each of the two above-captioned actions by the determination of the court as to liability in the matter of the July, 1968 voyage of the S.S. CAMPECHE

between Coatzacoalcon, Mexico and New York City; and

2. Should the defendants or one of them be adjudged liable to plaintiff with respect to the July, 1968 voyage, then Pittston Stevedoring Corp., the third-party defendant, ("Pittston") agrees to contribute 13% of the amount adjudged to be owing from defendant to plaintiff in the matter of the May, 1968 voyage; and

3. In respect to the second-captioned action (73 Civ. 5341) the parties and their counsel agree that that case is to be discontinued as against Pittston with prejudice and without costs.

In their pre-trial order dated November 14, 1974, the parties agreed that there was no dispute as to the following facts:

1. The cocoa butter involved in these shipments was manufactured on the premises of Industrializadora de Cacao de Tabasco at Cardenas, Tabasco, Mexico;

2. The cocoa butter was trucked from Tabasco to Coatzacoalcos where it was loaded aboard the S.S. CAMPECHE;

3. Bill of Lading # 20 for 6400 cartons of cocoa butter, weighing approximately 50 pounds each, was issued by the carrier, defendant Mexican Line, and was issued clean on

board under date of July 13, 1968;

4. Of the 6400 cartons of butter, 3668 were stowed in # 1 lower hold aft and 2732 were stowed in # 4 tween deck; and

5. The CAMPECHE departed Coatzacoalcos on July 14, and after a stop-over for a few hours in Philadelphia, arrived at the Port of New York (Staten Island) on July 23, 1968.

Although the issues of liability are close, mainly because the evidence at best is somewhat inconclusive, the court determines that plaintiff has not met its burden of showing that the cocoa butter involved in the July, 1968 shipment was loaded in good order and condition at Coatzacoalcos. In other words, then, the court finds that plaintiff must be non-suited for failure of proof of liability on the part of the defendant Mexican Line.

THE FACTS

All agree that the claims here tried are causes within the admiralty jurisdiction of this court. See Rule 9(h), F.R.Civ.P. Plaintiff ("ACLI") is a New York corporation. It owned the cargo or cargoes of cocoa butter in question by virtue of purchase from the manufacturer in Tabasco, Mexico.

Mexican Line, of course, is a corporation organized [illegible] the laws of Mexico. At all material times it owned, operated and managed the CAMPECHE, a vessel of 2,312 gross tons, built in 1954 with four hatches and holds.

The cocoa butter in question was manufactured in Tabasco in the plant by pouring melted or fluid cocoa extracted from the cocoa bean into molds for cooling and hardening purposes. In brief, the cocoa was poured into polyethylene bags within the molds and allowed to cool therein after the bags were ti[illegible] off to prevent, as much as possible, any seepage. Upon cooling, the polyethylene bags, weighing close to 50 pounds each, were placed in single-board cardboard cartons and stapled. Though the testimony of the manufacturer's representative in Mexico was distressingly vague, it appears that not long after packaging, the cocoa butter cartons were moved out into the cool of the night for loading and transportation by truck from Cardenas to the government pier sheds at the Port of Coatzacoalcos. There is evidence that the truck trips generally were supposed to take about two hours, but I infer that more likely than not, the trucking of the cargo in question in July, took place on July 10, and continued over into the day of July 11, 1968. In other words, I infer that the trucking took longer than four hours per trip and

that some of the trips took place after the sun had arisen.

Just how and where the cargo of the July shipment was stacked in the government sheds at Coatzacoalcos is not clear, except to say that it was placed in these open sheds under corrugated iron roofing.

Despite conflicting evidence on the point, it is found that the melting point of cocoa butter is in the range from 30° to 36.3° centigrade. Despite testimony that the government warehouse may have been at temperatures slightly below that range, I find that a good portion of the cargo from July 11 to July 13, was tiered up quite high under the sheds, either in a position where there was little circulation of air or where some of the cartons were very close to the metal roof under the blazing sun, or both.

It seems to be conceded that it was not customary in the trade, at least in 1968, to carry cocoa butter in reefer ships. Certainly all agree that the CAMPECHE was not a refrigerated vessel. As stated, the loading took place on July 13, when the CAMPECHE came in from a previous port of call, Vera Cruz. Mexican Line issued a clean on board bill of lading signed by the Master for the loading on July 13th. The loading plan in evidence shows, and knowledgeable witnesses agreed, that 3668 cartons were loaded and stored in the # 1 lower hold on top of barrels of lemon

oil and bags of dried flies. The evidence shows that dunnage and tarpaulins were placed under the cocoa butter; that the cartons were tiered at least eight cartons high or more, the stow being topped off unevenly in terms of height. There is also evidence that dunnage was placed within the stow at a level of five cartons high.

The remaining number of cartons of the July, 1968 shipment, 2732 in all, were loaded in the # 4 tween deck area. The evidence establishes that this group of cartons was out-turned in New York City in good order and condition. Thus, the claims of plaintiff in respect to the July 13 shipment center upon the 3668 cartons, or a substantial portion thereof, loaded in the # 1 lower hold beneath the water line of the CAMPECHE.

There is no evidence that either the manufacturer or an ACLI representative issued any special instructions for loading aboard the vessel, save for the fact that on the cartons of cocoa butter there appeared a legend indicating that the cartons could be stacked not to exceed 30 cartons high. The evidence is uncontradicted that at Coatzacoalcos the union stevedore loaded by means of twine nets containing pallets of cocoa butter cartons stacked no more than five high. No hooks were used by the Coatzacoalcos

longshoremen.

There is evidence that during the voyage from Coatzacoalcos to New York via Philadelphia, there was no rough weather encountered; there were no temperature or humidity readings taken in the cargo hold; the weather was not excessively warm, averaging about 75° Fahrenheit; and no particular daily inspection of the cargo holds was performed, at least in respect to the areas where the cocoa butter was stored. From the plaintiff's viewpoint, it might be added that there is some confusing opinion testimony from the Chief Officer of the CAMPECHE on the July, 1968 voyage to the effect that the damage was a result of improper stow. I reject his opinion evidence, not only because it is ambiguous, but also because his reasons or bases therefor are not explained. I also conclude that the failure to take temperature and humidity readings and the failure to inspect the stow had nothing to do with the damage which was discovered at Staten Island.

The CAMPECHE arrived at pierside in Staten Island on July 23, 1968. On that day and the following day the temperature was unusually warm here in New York City, hovering in the 80's and low 90's Fahrenheit. Survey

reports indicate that upon discharge, 1400 of the 6400 cartons out-turned in a stained, fluid and generally unsatisfactory, if not contaminated, condition.

CONCLUSIONS OF FACT AND LAW

Concededly, the CAMPECHE in the July, 1968 voyage was engaged in the common carriage of goods for hire. It is also clear that bill of lading # 20 dated July 13, 1968, is subject to the provisions of the Carriage of Goods by Sea Act and that ACLI is a holder in due course of the bill of lading.

Contrary to the contentions of the plaintiff, I do not find that ACLI has proved by a preponderance of the evidence that the out-turn of damaged cartons was caused by improper stowage and/or by negligent custody and control of the cargo by the Mexican Line and its agents. To the contrary, although the matter is not free from doubt, I believe that the better view of all of the evidence is to the effect that a good portion of the cartons loaded in the # 1 lower hold at Coatzcoalcos were not in good order and condition. Specifically, I find that the 1400 cartons out-turned damaged were the result of inherent vice of cargo, except perhaps for a very few which were mishandled by the stevedoring concern on out-turn here in New York.

The court has already stated that the record does not indicate which of the July, 1968 cartons were stowed where in the government sheds in Coatzcoalcos. But the inference is strong that a significant number of these cartons were in a position in the sheds where they could not receive proper circulation or were placed very close to the hot sheet metal roofing under the blazing coastal sun, or both. Further, it seems more than likely that these particular cartons happen to have been loaded aboard the vessel together and found their way into # 1 hold where they were stowed in a melted state either in the middle or down low in the stack. As a result, in my view, almost as soon as the cargo was stowed on July 13, and the voyage got under way, the weight of the cartons on top was sufficient to crush the single-walled cardboard cartons of this group and thus break open the polyethylene bags, causing melted cocoa butter to seep down through the bottom of the stack, through the dunnage and tarpaulins, and onto the drums of lemon oil and boxes of dried flies. 1/

1/ Moreover, there is record evidence tending to suggest that the single-wall cartons may have been a contributing factor to the damage. A defense witness, a manufacturer and shipper of cocoa butter, testified that double-wall cartons, strapped by metal straps rather than just stapled, are preferred containers for ocean shipments of cocoa butter. Surely, it is possible that such stronger cartons might have maintained their integrity even when the cocoa butter lost its solid state and became liquid.

Bill of Lading # 20, dated July 13, 1965, and issued by or on behalf of the S.S. CAMPECHE, is subject to the provisions of the Carriage of Goods by Sea Act, and ACLI is a holder in due course of that bill.

Although plaintiff proved discharge of 1400 cartons of this shipment in a stained, soft and contaminated condition, ACLI has failed to prove that the damage was due to either improper stowage or any other negligent custody and control of the cargo by the Mexican Line and its agent. Hence, ACLI has failed to establish its burden of proof against the defendants. There is nothing to show that the ship was unseaworthy or that the vessel was improperly manned, governed and sailed on the voyage from Coatzcoalcos to New York. As stated, the facts that the ship's officers did not inspect the holds or hold areas here pertinent during the voyage, and that they did not take temperature and humidity readings therein, are irrelevant to the damage here found.

Although it is true that the CAMPECHE and its officers should have been aware of the characteristics of cocoa butter, they had no reason to be concerned about any special problem about this cargo. The court finds that when the cartons were loaded, even those in a liquid state were not obvious to any observer because the integrity of the cartons had not at that point been

breached. Furthermore, the comparatively smooth voyage at relatively mild temperatures would have given no indication of any difficulties particularly pertinent to the transportation of presumably soundly packaged and properly rigid cartons of cocoa butter.

Moreover, to the extent that plaintiff contends otherwise, I do not accept that there is any convincing evidence that the vessel failed to discharge the cargo to a "fit wharf" here in New York. Apparently, all concede that Mexican Line retained Pittston to discharge the cocoa butter; nonetheless, such available evidence as there is suggests that Pittston had properly handled discharges of cocoa butter in the past.

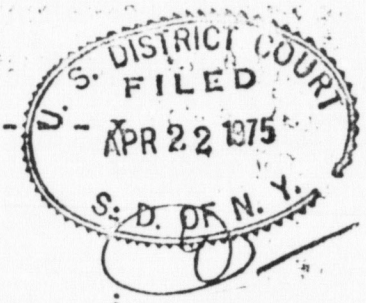
Accordingly, the court concludes that the plaintiff must be non-suited for failure of proof in respect to not only the July, 1968 voyage, but also, in light of the stipulations heretofore mentioned, all other voyages which are the subject of the two suits. In addition, since ACLI asserted no claims directly against Pittston, it follows that the third-party complaints against Pittston no longer have any basis and must be dismissed. Settle judgment or judgments accordingly.

Dated: March 31, 1975

Harold R. Tyler, Jr.
U.S.D.J.

JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S.A., dba MEXICAN LINE,

Defendants,

TRANSPORTACION MARITIMA MEXICANA, S.A.,

Defendant and Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,

Third-Party Defendant.

JUDGEMENT

ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

TRANSPORTACION MARITIMA MEXICANA S.A., dba MEXICAN LINE and SMITH AND JOHNSON (SHIPPING) INC.,

Defendants,

TRANSPORTACION MARITIMA MEXICANA S.A.,

Defendant and Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,

Third-Party Defendant.

73 Civ. 5341 HRT

A 63

Judgment

This action came on to be tried before the Court, and the evidence adduced by the parties having been heard, and the court having made its findings of fact and conclusions of law, it is hereby

ORDERED AND ADJUDGED that the action by plaintiff against defendants as well as the third party action by third party plaintiff against third party defendant herein be and the same is hereby dismissed on the merits.

Dated at NYC this 16th day of April, 1975.

U.S.D.J.

JUDGMENT ENTERED - 4/23/75

Raymond F. Burghardt
CLERK

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL, INC. Plaintiff, vs. S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S.A. doing business as MEXICAN LINES, Defendant. vs. TRANSPORTACION MARITIMA MEXICANA, S.A., Defendant and Third Party Plaintiff, -against- PITTSTON STEVEDORING CORPORATION:	Before: HON. HAROLD R. TYLER, JR. District Judge. 73 Civ. 1297

New York, December 23, 1974 January 16, 1975

STENOGRAPHER'S MINUTES

APPEARANCES:

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN, Esqs.,
Attorneys for Plaintiff,
By: F.W. MEEKER, Esq. and
MARTIN MULROY, Esq.,
of Counsel

HAIGHT, GARDNER, POOR & HAVENS, Esqs.,
Attorneys for Defendants and Third-Party Plaintiff,
By: THOMAS F. MOLANPHY, Esq.,
of Counsel

BIGHAM, ENGLAR, JONES & HOUSTON, Esqs.,
Attorneys for Third-Party Defendant,
By: NICHOLAS CAMERA, Esq.,
of Counsel

- - -

THE COURT: I apologize for the delay this morning. Now I have the stipulations which you entered into, your pretrial orders, et cetera, and briefly, as I understand it, we will be trying the '68 claim, which is the subject of our docket No. 73 Civ. 1297? Is that correct?

MR. MEEKER: Yes, your Honor.

THE COURT: And depending on what happens in that there will be other consequences which I don't think we need to put on the record. They are clear enough from the stipulation.

Now, Mr. Meeker, do you want to call your first

witness?

MR. MEEKER: Yes, your Honor. The plaintiff calls Mr. Albert Lovitts.

A L B E R T R. L O V I T T S, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEEKER:

Q Mr. Lovitts, by whom are you employed?

A ACLI International, Incorporated.

Q What is the nature of the business of ACLI International?

A Commodity dealers.

Q In what capacity are you employed?

A Claims manager.

Q How long have you been employed in that capacity?

A 22 years.

Q What are your duties as the claims manager?

A To evaluate claims, if any, on shipments arriving into the port.

Q What shipments would these consist of?

A Cocoa, cocoa beans, cocoa butter, coffee and other commodities.

Q In May of 1968 did you become aware of a claim

on cocoa butter re the vessel Campeche ?

A Yes.

Q How did you become aware of that claim?

A I am not specific at this point, but we would have received some notification, probably form our weigher at the pier that damage existed to our cargo.

Q Exactly what was this cargo? Do you recall?

A Cocoa butter.

Q From whom did you purchase this cocoa?

A Industria -- I am sorry -- I don't have the title in front of me.

Q Will you identify that document for me.

A Yes, and this is a contract to purchase cocoa butter from Industrializadora de Cacao De Tabasco.

Q Does this contract relate to the cargo in question?

A Yes.

Q Does that cargo represent the entire amount in question?

A I believe so.

MR. MEEKER: If I may offer tha in evidence as Plaintiff's Exhibit 1.

MR. MOLANPHY: I have no objection.

(Plaintiff's Exhibit 1 was received in

evidence.)

THE COURT: Do you need this document to work with?

MR. MEEKER: I would like to have Mr. Lovitts refer to it again.

Q Mr. Lovitts, could you tell us the terms of that contract?

THE COURT: I would suggest that the terms speak for themselves. We don't need to ask him.

Q Were you subsequently invoiced for this cargo?

A Yes.

Q I show you another document. I ask you if you can identify that?

A This appears to be the invoice related to this contract.

MR. MEEKER: I ask that the invoice be marked as Plaintiff's Exhibit 2 for identification.

(Plaintiff's Exhibit 2 was marked for identification.)

MR. MOLANPHY: No objection.

MR. CAMERA: No objection.

(Plaintiff's Exhibit 2 for identification was received in evidence.)

Q Any other documents received in connection with

this cargo from your shipper?

A Yes, there would have been a bill of lading.

Q I show you this document and ask you if you can identify it.

A Yes, this is the bill of lading of the American Line which would relate to the cargo involved.

MR. MEEKER: I offer the bill of lading in evidence as Plaintiff's Exhibit 3.

MR. MOLANPHY: No objection.

MR. CAMERA: No objection.

(Plaintiff's Exhibit 3 was received in evidence.)

Q When you received that bill of lading and the invoice was there any indication on those documents that the cargo was in any way damaged?

A No.

Q Had been any indication on those documents that the cargo was damaged would you have paid for the cargo?

MR. MOLANPHY: Objection, your Honor.

THE COURT: We don't need to get into that. That is just conjecture.

Q Mr. Lovitts, referring to the invoice, was this invoice paid by ACLI?

A Yes.

Q Can you tell us when you became aware or when ACLI became aware that there was damage to this cargo?

A At some time after the discharge through notification by probably the weigher.

Q Subsequent to discharge did you make a claim against anyone for this damage?

A At some later date we did file a claim against the Mexican Lines for the damages.

Q I show you a document and ask you if you can identify that.

A This is our claim statement which we filed against Smith and Johnson as agents for the Mexican Line.

MR. MEEKER: I offer that in evidence.

MR. MOLANPHY: I will object to it.

THE COURT: We will mark it for identification.

(Plaintiff's Exhibit 4 was marked for identification.)

xx

THE COURT: May I see it, Mr. Meeker.

What is this, a bill for reconditioning work, Mr. Lovitts?

THE WITNESS: Yes, and the expenses, as well as any loss related to the claim.

THE COURT: See if I can understand that. Who is, I guess it is, A.C. Israel Commodity Co.? Who are

they?

A That was our former name.

THE COURT: Oh, that is your name?

THE WITNESS: Yes.

THE COURT: What is this document? Some kind of an international document? Or do you send it to somebody? Or what?

THE WITNESS: This is our claim bill which we presented to the carrier's agent.

THE COURT: This is a copy of what you presented to Smith and Johnson?

THE WITNESS: That is correct.

THE COURT: Are you able to tell us, did you send it to Smith and Johnson in the mail or did you hand it to them or what happened?

THE WITNESS: It would have been sent through the mail.

THE COURT: Can you testify to that from your own knowledge in the regular course of business it went out in the mail?

THE WITNESS: Yes, sir.

THE COURT: What is the objection, Mr. Molanphy?

MR. MOLANPHY: It is obviously being offered for proof of its contents as to what was done, and I believe the

people who did the work are here to testify.

THE COURT: Well, that may be, but I take it subject to any imperfections of that kind, it seems to me it is more or less being offered to show that it was a bill presented to Smith and Johnson as agents for Mexican Lines. You may be right. Maybe it is not based on anything sensible, but that doesn't mean it can't come in.

(Plaintiff's Exhibit 4 for identification was received in evidence.)

xx

2

Q Mr. Lovitts, did you become personally aware of the damage complained of in Plaintiff's Exhibit 4?

A Yes.

Q How did you get this knowledge?

A As indicated before, it was through notification by probably the weigher.

Q Now, in Plaintiff's Exhibit 4 there are various sums alluded to. There is an amount of $81.84. Will you tell me what that represents, Mr. Lovitts?

A It represents 124 pounds of butter that was lost in the reconditioning process.

Q And what does the reconditioning process consist of?

A To the best of my knowledge it would have involved scraping of the butter to remove any filth or

contaminants.

Q The second amount consists of $6,564.24.

Could you tell me what that represents?

A That was a charge by Walker Weighing Corporation for recartonizing 1705 stained cartons.

Q Will you identify who Walker-Wayne Weighing Corporation is?

A Walker Weighingare weigh masters who frequently represent us at the pier either in weighing or supervising deliveries. They do reconditioning as well.

Q There is also an amount for $575. Could you tell me what that represents?

A That is an assorting charge also by Walker Weighing, to separate the stained from the sound.

Q In the final figure of $1,758?

A That is a reconditioning charge of S.A. Wald & Company, Inc., for working on 501 cartons that had been broken.

Q Will you identify S.A. Wald?

A S.A. Wald are reconditioners and salvors.

Q Now, Mr. Lovitts, I show you three documents and I wonder if you can identify them.

A The first is a bill of S.A. Wald & Company, Inc., for reconditioning 601 cartons.

May I correct my earlier statement? On my claim there's a correction of 601. The second item is the invoice of Walker-Wayne Corporation for recartonizing on 1705 stained cartons. And the third one, an invoice from Walker-Wayne Corporation for sorting stained and damaged cartons.

MR. MEEKER: I would offer these three documents as 5, 6 and 7, your Honor.

(Plaintiff's Exhibits 5, 6 and 7 were marked for identification.)

MR. MOLANPHY: No objection.

MR.CAMERA: No objection.

(Plaintiff's Exhibits 5, 6 and 7 for identification were received in evidence.)

Q Mr. Lovitts, was an additional claim received for cocoa butter cargo in July of '68, as you recall?

A Yes, there was.

Q Do you recall what happened with the amount of that cargo, what the amount of that cargo was that that claim was on?

A The amount of it?

Q The number of cartons that were received in this shipment.

A No, I don't have it before me. I don't recall

it.

Q Do you recall who you purchased this cargo from?

A It would also have been from Industrializadora de Cacao de Tabasco, S.A.

Q I show you a document and ask you if you can identify this.

A Yes, this is a copy of the purchase contract.

(Plaintiff's Exhibit 8 was marked for identification.)

xx

MR. MOLANPHY: No objection, your Honor.

MR. CAMERA: No objection, your Honor.

(Plaintiff's Exhibit 8 for identification was received in evidence.)

xx

Q Were you subsequently invoiced for this?

A Yes, sir.

Q I show you this document.

A Yes, this appears to be the invoice relating to the contract.

Q Did you receive any other documents with this cargo?

A Yes, a bill of lading.

Q Can you identify this document?

A Yes, this is the bill of lading of theMexican Line.

MR. MEEKER: I offer these two documents as Plaintiff's Exhibits 9 and 10, your Honor, the invoice being 9 and the bill of lading being 10.

THE COURT: May I have Plaintiff's Exhibit 1? Thank you.

(Plaintiff's Exhibits 9 and 10 were marked for identification.)

xx

MR. MOLANPHY: No objection.

MR. CAMERA: No objection.

xx

(Plaintiff's Exhibits 9 and 10 were received in evidence.)

Q Mr. Lovitts, did there come a time when you became aware of this cargo that was received in July of '68?

A Yes.

Q Did you notify anyone of that claim?

A Did we notify anyone of the claim?

Q Yes.

A Yes, we did write a letter to the carrier aftering advised of the nature of the claim protesting the condition.

Q Did you pay that invoice in full from Industrializadora de Tabasco dated July 10th?

A To the best of my knowledge we did. Yes, sir.

Q I show you a document and ask you to identify that.

A Yes, this is a copy of our claim statement against the Mexican Line representing the losses as sustained on that shipment.

MR. MEEKER: I ask that this be marked for identification.

(Plaintiff's Exhibit 11 was marked for identification.)

MR. MEEKER: I offer it.

MR. MOLANPHY: I will object to this document on the same grounds as the claims statement.

THE COURT: I am going to make the same ruling and admit it for the purpose which I stated a moment ago regarding a similar exhibit.

MR. MOLANPHY: No objection.

MR. CAMERA: No objection.

(Plaintiff's Exhibit 11 for identification was received in evidence.)

Q I hand you four documents and ask you if you can identify those documents.

A The first document is an invoice from Walker Weighing Corporation for supervising delivery. It reflects a separation of sound and damaged cargos on the pier.

The second document is a memorandum from Walker-Wayne Corporation wherein they advise us that a thousand

cartons were delivered and 1400 damaged and/or short remain on the pier.

They further advised that three to four hundred cartons were set aside on the stringpiece and might be considered a total loss.

The next document is an invoice from Walker Weighing for sorting, and this represents a further separation of the damaged cartons by degree of damage.

The last document is an invoice or account sales of S.A. Wald & Company, Inc. representing the cost of reconditioning, as well as a partial salvage sale.

MR. MEEKER: I offer these in evidence as Plaintiff's next for exhibit.

MR. MOLANPHY: No objection, your Honor.

MR. CAMERA: No objection.

(Plaintiff's Exhibits 12, 13, 14 and 15, inclusive, were received in evidence.)

Q All these various invoices that we have identified, both the sales invoices and the invoices presented by the various reconditioners and surveyors, were these paid as presented by ACLI?

A To the best of my knowledge they were all paid, yes.

Q I would like to turn my attention to one of those exhibits, I believe it's one of the Walker Weighing exhibits --

MR. MEEKER: Your Honor, when you are finished.

Q Mr. Lovitts, I show you Plaintiff's Exhibit 14, where it would indicate that 1400 cartons were damaged and would ask if this claim includes all 1400 cartons.

MR. MOLANPHY: I object. I don't quite understand the question.

THE COURT: I am not sure I do. What do you mean "their claim"?

MR. MEEKER: The July '68 claim, this voyage.

THE COURT: Why don't you reframe it.

Q We have identified documents involving two voyages, one for May of '68 and one for July of '68 --

THE COURT: I thought we were trying the July one.

MR. MEEKER: The July one as to liability, but as far as damages, we will have to prove damages on May of '68 also. I would trust that we are through with May at this point.

THE COURT: At any rate, in order to clarify things for Mr. Molanphy's point of view and mine, why don't you rephrase the question.

Q The invoice, Plaintiff's Exhibit 14, I believe,

could you tell me what that represents?

A This is the memorandum from Walker-Wayne advising us that a thousand cartons were delivered and 1400 damaged remained on dock.

Q Now, did ACLI make claim against Mexican Lines for all those 1400 cartons?

A I believe we made a further effort to minimize the claim in additional sorting. I don't have the count in front of me, but there were a number of lightly stained cartons which were deliverable into the train, and the balance, the remaining cartons had to be reconditioned.

THE COURT: I am not sure I understand that.

As I understand the question, did you make claim for the 1400 cartons?

MR. MEEKER: That are denoted to be damaged.

THE COURT: I know. So what is the answer. Did ACLI make such a claim or didn't it?

THE WINTESS: We reduced the 1400 by 502 and made claim for the balance.

Q Did there come a time you personally visited the pier in which this cargo came in?

A Yes.

Q Will you tell us approximately when that was?

A It would have been in mid August.

Q Will you tell me what you found when you arrived at the pier?

A Well, arriving at the pier we asked for the location of our butter, being particularly concerned with the 449 cartons that were supposedly on the stringpiece. In fact, we found it ourselves by following a stream of liquid right to the pile.

The cartons of butter were set out in direct sunlgiht. Many had burst. And, of course, there was constant flowing of melted butter from these cartons. In many instances the polyethylene bag inside protruded, if I may, looking like an amber blister containing liquid butter.

Q Is it normal for you to visit discharge sites?

A I do from time to time when the condition warrants.

Q What do you mean "the condition warrants"?

A Where I am advised or I have indicat[illegible] that we might be dealing in an unusual damage situation I will visit there.

Q Did oyou consider this an unusual damage situation?

A Yes, I did.

Q You have stated that you have been a claims manager for ACLI for 22 years and you say you deal primarily in cocoa and coffee? Is that correct?

A That is correct.

Q Is it part of your duties to familiarize yourself with the various physical properties of these commodities that you deal with?

A To some extent, yes.

Q Do you know, for instance, the melting point of cocoa butter?

MR. MOLANPHY: Objection.

MR. CAMERA: Objection.

THE COURT: Does he know the melting point of butter?

MR. MEEKER: I believe that the witness testified that to some extent he familiarizes himself with the properties of commodities.

MR. MOLANPHY: I think this gets in an area of expert testimony.

THE COURT: Perhaps so, but maybe he knows. I don't see anything wrong with that. However, Mr. Meeker, would you do two things, please -- keep your voice up. You dropped off badly there. I could not hear it. Second of all, to the extent I did hear, I assume you were asking about cocoa butter.

MR. MEEKER: Yes.

THE COURT: Well, let's put the question again.

Q Would you know the melting point of cocoa butter,

Mr. Lovitts?

A I understood it to be about 95 degrees Fahrenheit.

MR. MOLANPHY: I object.

THE COURT: That may go to the weight, but I am going to allow it.

Q Does ACLI import cocoa butter from other locations, other than Mexico?

A Yes, we do.

Q What locations would these be?

A Well, let's see. There would be the Dominican Republic, Brazil, West Africa, the Philippines, most of the producing areas.

Q Are you familiar with the packing of this cocoa butter that is the subject of this suit?

A Generally, yes.

Q I ask you if you could identify this, Mr. Lovitts?

A Yes, that happens to be a typical carton of Mexican cocoa butter.

Q Is this similar or identical to the cocoa butter that you sighted at Pier 20, Staten Island?

A It would seem to be pretty much the same. I would say it is identical.

MR. MEEKER: I offer this as the plaintiff's next exhibit.

THE COURT: That will be marked Plaintiff's Exhibit 16.

MR. MOLANPHY: No objection.

MR. CAMERA: No objection.

(Plaintiff's Exhibit 16 was received in evidence.)

Q Mr. Lovitts, you stated that you or ACLI imports cocoa butter from various locations around the world. Will you tell me if the packing was similar or dissimilar to that Exhibit 16?

A The cartons may vary slightly in size, but generally they are similar.

Q In your experience does ACLI import any cocoa butter that is packed in wooden crates?

A Not to my knowledge.

Q Does it import cocoa butter that is packed in drums?

A No.

Q This cocoa butter that you imported from various other regions, could you describe the interior packing of that?

THE COURT: Well, first of all, have you ever examined the interior packing of one of these containers imported from the Philippines or the Dominican Republic,

other than Mexico?

THE WITNESS: Yes, I have.

Q Could you describe the interior packing?

A Well, they will tend to vary. I think the most different one that I have seen would be the Philippines, which uses small blocks or small slabs in polyethylene bags, a number of polyethylene bags containing small blocks of butter in them. Others, I believe, come in 10-pound slabs, five to a carton, also wrapped in polyethylene in most cases.

Q Is it customary for ACLI to insist on refrigerator carrying of cocoa butter?

A No.

Q Does ACLI ever receive cocoa butter off refrigerated vessels?

A I have never seen any.

MR. MOLANPHY: I object to the relvancy of this.

THE COURT: Well, again, as I understand it, isn't it true that the parties stipulayted that we were not concerned here withrefrigeration?

MR. MEEKER: I don't believe that was the stipulation your Honor.

THE COURT: Then my next problem is, against, your questions are in the negative, and I don't think from your

own point of view they prove very much. I certainly would allow his knowledge if he has any on the practice of the trade and usage. But you have not put that question,as I heard it. So be my quest. If you would like to ask it another way, do so and keep your voice up, Mr. Meeker.

Q Mr. Lovitts, from your experience you say that it is customary to ship cocoa butter in refrigerated vessels?

A No.

Q From your experience is it normal in the trade to ship cocoa butter in polyethylene bags cartonized in cardboard containers, fiberboard containers?

A Yes.

Q What is the normal weight for these containers?

A They average about 50 pounds.

MR. MEEKER: I have no further questions.

THE COURT: This willbe a good time to take the morning recess. Ten minutes. And then we will hear from cross examination from Messrs. Molanphy and Camera.

(Recess.)

CROSS EXAMINATION

BY MR. MOLANPHY:

Q Mr. Lovitts, do you know when ACLI began importing cocoa butter from Industrializadora?

A I do not know exactly, no.

Q Do you know if the shipments that we had been talking about in May of '68 and July of '68 were among the first that ACLI imported from Industrializadora?

A No, we had dealt with them prior to that.

Q Do you have any idea approximately how long?

A No.

Q Referring to Plaintiff's Exhibit 16, this carton, just so the record is straight, Mr. Lovitts, is it customary to receive them with a cord around them, such as this one has?

A No.

Q Is there any exterior strapping on the carton as it is received?

A No, not that I am aware of.

Q You mentioned shipments received by ACLI from other parts of the world. Do you receive shipments where there is a binding or strapping of any kind on the outside of the carton?

A Offhand I am not aware of any.

Q Do you receive cartons from any parts of the world that have any interior structural support to the sides of the carton?

A None that I am aware of.

Q You receive cartons from other parts of the world where there is more than one polyethylene bag on the inside? Is that right?

A Yes.

Q What is the maximum number of polyethylene bags in the shipments received by ACLI?

A I would say several. I think I have seen six bags inside a carton, but I can't be sure of the exact time.

Q Inside of the cartons received from this particular shipper there are how many polyethylene bags?

A There is one.

Q And the entire 50 pounds of cocoa butter comes within that one polyethylene bag?

A That is right.

Q The documents that have been marked in evidence refer occasionally to recartonizing?

A That is correct.

Q And were those cartons as recartonized eventually sold by ACLI?

A Yes.

Q For the full price?

A I would presume so.

Q You mentioned, sir, having been informed that the melting point of cocoa butter is approximately 90 degrees Fahrenheit?

A Yes.

Q Have you seen that recorded in any document?

A Offhand I don't recall.

Q Do you recall where you received this information from?

A I have been living with it for a long time. I can't recall its origin.

Q Mr. Lovitts, are you familiar with the publication known as the Pharmacopia?

A I have heard of it.

Q Have you heard of it being an authority in the field of chemical analysis of combustibles?

A I am not familiar.

Q Is cocoa butter technically known as theobroma oil?

A I am not familiar with its technical name.

Q Isn't it true, sir, that the melting point of cocoa butter is between 30 and 35 degrees centigrade?

A I am familiar with only the Fahrenheit scale at this point.

Q Are you familiar with the conversion tables of Fahrenheit and centigrade?

A Yes.

Q Could you tell me what 95 degrees Fahrenheit roughly converts to in centigrades?

A I think I will need pencil and paper to do that.

Q Would you accept a statement, sir, that 95 degrees Fahrenheit converts to 35 degrees centigrade?

A If that is the table you are working from, I will accept it.

Q Would you agree, sir, with the prior statement that I made that theobroma oil melts between 30 and 35 degrees centigrade?

A I know of 95 degrees; I, therefore, cannot really speak for the 30 degree centigrade temperature.

Q Would you agree, sir, that 30 degree centigrade converts to roughly 86 degrees Fahrenheit?

A I will accept that.

Q And a the presenttime you have no recollection of where you received the information that cocoa butter melts at 95 degrees Fahrenheit?

A No, other than I have beenworking with it for

22 years.

Q Do you have any personal knowledge of when and where the cocoa butter involved in these shipments was manufactured?

A At the shipper's plant.

Q Is that to your personal knowledge, sir?

A No, it is not to my personal knowledge.

Q Do you have any personal knowledge as to the mode of transporting the cocoa butter from wherever it is manufactured to the port of shipment?

A I do not.

Q Do you have any personal knowledge as to the storage facilities at the port of shipment?

A I do not.

Q And, by the way, the port of shipment that we are concerned with here is Coatzacoalcos, Mexico?

A Yes.

Q And that is roughly on the east coast of Mexico south of Vera Cruz?

A I believe so.

Q Do you have any personal knowledge, sir, as to how long the cocoa butter is stored at the port facilities at Coatzacoalcos before being shipped?

A No, I do not.

Q Do you have any personal knowledge, sir, as to the prevailing temperatures in the port of Coatzacoalcos?

A No, I do not.

Q Were the two shipments that we are concerned with here, sir, surveyed on behalf of ACLI?

A Yes, they were.

Q Would you identify, please, the surveyor so engaged?

A In both instances we used Lloyd Surveyors through Toplis & Harding in New York.

Q Were they then engaged specifically to conduct a survey to determine the amount of damage and loss involved?

A Yes.

Q Did ACLI also engage the services of Walker-Wayne?

A Yes, we did.

Q And what was their function?

A Principally to supervise the delivery of the cocoa butter.

Q They were not engaged to survey?

A No.

Q And S.A. Wald, whose invoices have also been marked in evidence, were they engaged by ACLI?

A Yes, they were.

Q For what purpose?

A For reconditioning and salvage.

Q And they were not engaged to survey at all?

A No, they were not.

Q Were there any other contractors, other than the surveyor, Walker and Wald who were engaged by ACLI in connection with these shipments?

A Not to my knowledge.

Q Did you receive reports of the survey from Toplis & Harding in connection with these two shipments?

A Yes, we did.

Q Do you have them with you, sir?

MR. MOLANPHY: Counsel has just handed me two documents.

Q I will ask you, sir, if you can identify them for me.

A The first document is a survey report of Lloyds' agents. The second document is an addendum to the survey. And the third is a second addendum to the survey.

Q Were those in connection with the shipments under bill of lading No. 10 of May, 1968?

A Yes.

MR. MOLANPHY: May we have those marked for

identification, please.

(Defendants' Exhibits A, B and C were marked for identification.)

THE COURT: Do you want to offer those?

MR. MOLANPHY: Not yet, your Honor.

Q And the other two documents that were handed to me by plaintiff's counsel?

A The first is a Lloyd survey report for the July arrival, and the second is an addendum to that report.

MR.MOLANPHY: May we have those marked for identification.

(Defendants' Exhibits D and E were marked for identification.)

Q Mr. Lovitts, did you in your capacity as claims manager for ACLI International in the regular course of your business as such institute an investigation into the possible cause of the damage to the cocoa butter involved in shipments received from Mexico?

A Yes, I did.

Q Did you engage the services of a professional investigator?

A Yes, I did.

Q Was that the Albert R. Lee Company?

A Yes.

Q I show you this document, sir, which I will ask to have marked for identification.

(Defendants' Exhibit F was marked for identification.)

Q I ask you, sir, is that a copy of your letter engaging the services of the Lee Company?

A Yes, it is.

Q And that is in connection with shipments of cocoa butter coming from Coatzacoalcos to New York and Philadelphia?

A That is right.

MR. MOLANPHY: I offer that in evidence, your Honor.

MR. MEEKER: No objection.

MR. CAMERA: I have no objection.

(Defendants' Exhibit F was received in evidence.)

Q Mr. Lovitts, did you in your capacity as sales manager for ACLI generally receive a report from the Albert R. Lee Company following an investigation as requested?

A Yes, we did.

(Defendants' Exhibit G was marked for identification.)

Q I will show you this 2-page document, sir. Is that a copy of the letter report which you received from the Lee Company?

A Yes, sir.

MR. MOLANPHY: I will offer that in evidence, your Honor.

MR. MEEKER: I object, your Honor, as hearsay.

MR. CAMERA: I have no objection.

THE COURT: May I see it, please.

MR. MEEKER: If you will read the first sentence, he talks about a third-party conducting the investigation. He has no personal knowledge.

THE COURT: Well, I see your point and I think it should be acknowledged by an appropriate ruling, which is as follows: This document for the nonce will be received only as to the limited purpose of showing that the Lee Company responded to ACLI and Mr. Lovitts, but as far as proving the truth of the facts contained therein, it will not be received for this purpose on the present state of the record.

MR. MOLANPHY: Just briefly on that, I believe it is no more hearsay than the average document that has been received so far.

THE COURT: I disagree. I believe it is a little

more hearsay, because the writer apparently is saying that he does not have a knowledge of this, but somebody working for the Lee Company has come up with this information, a great deal of which is physical information, distances, et cetera, and I don't think that it would be fair to the plaintiff at this point as the record now stands to receive this material as absolutely probative of the factual matters contained therein.

However, I do think it is fair to allow you to show that the Lee Company did respond to Mr. Lovitts' request and that wil be that for the time being.

Q On receipt of Mr. Lee's report or the report of the Lee Company, Mr. Lovitts, did you communicate with the shipper of the cocoa butter in question?

A No, I did not.

Q Did you communicate with anyone at the Port of Coatzacoalcos in response to the report of the Lee Comany?

A No.

Q Did you communicate directly or indirectly, sir, with Watson Phillips, of Vera Cruz, Mexico?

A No.

Q Do you know who they are, sir?

A I believe they represented Lee in this investigation.

Q I will ask you to look at these two pages, sir --

(Defendants' Exhibit H was marked for identification.)

Q -- that have been marked Defendants' Exhibit H for identification and ask you if the second page indicates that ACLI received a copy of those documents?

A A carbon copy of Lee's copy to Watson was directed to me.

Q And Watson, I believe you testified, was the investigator engaged in Mexico?

A Yes.

Q The local investigator down there?

A Yes.

Q And you received a carbon copy of Lee's letter to Watson?

A Yes, I believe so.

MR. MOLANPHY: I will offer that in evidence, sir.

MR. MEEKER: No objection.

THE COURT: Mr. Meeker, may I ask for the record to show the name of your co-counsel here. It doesn't seem to appear on my sheet.

MR. MEEKER: Martin Mulroy.

THE COURT: Thank you.

(Defendants' Exhibit H was received in evidence.)

MR. MOLANPHY: On the basis of that additional foundation I would renew my offer of the original Lee report as proof of the facts stated therein.

MR. MEEKER: I have the same objection. I don't think it adds anything to the foundation.

THE COURT: I agree with plaintiff, Mr. Molanphy. This really has nothing to do with the point that I think plaintiff is entitled to make. I said I would receive it for one purpose, but not for proof of facts of the investigation contained therein, because it is really triple hearsay, it is an out-of-court declarant who did the investigation and the writer of the letter is not an out-of-court declarant.

MR. MOLANPHY: I believe the witness said this examination was instigated by him in the ordinary course of business.

THE COURT: That's why I am allowing the letter to come in for the limited purpose. But the point that I made I still adhere to.

Q Mr. Lovitts, did you view either of these shipments in stow on the vessel?

A No.

Q Do you know where above the vessel in fact, stowed?

A No.

Q Are you familiar, sir, with the handling of cartons of cocoa butter?

A I am not sure I understand the question.

Q What I had in mind, sir, is it cumstomary to use hooks in handling this commodity?

A I would say definitely not.

Q At the time you viewed the cartons of cocoa butter involved in the July, 1968, shipment did you see any that were, in fact, showing signs of having hooks used on them?

A I believe so, but I would have to refer to my notes to be sure.

Q Do you have those notes with you, sir?

A I am afraid my notes in this instance concentrated primarily on the butter that was stored on the stringpiece and doesn't make specific reference.

Q Do you recall, sir, what the temperature was approximately at the time you viewed the shipment on the stringpiece in July?

A No, I do not.

Q Do you recall whether it was in the 90s?

A I recall that it was very warm, but I can't tell you

the temperature.

Q Is it customary in your experience, Mr. Lovitts, to store cargo, such as cocoa butter, on an open stringpiece in the summertime?

MR. CAMERA: I object to that question, your Honor.

MR. MOLANPHY: Based on his experience to store shipments, such as cocoa butter on an open stringpiece.

THE COURT: I will allow that.

A I never experienced it prior or since.

Q I take it your answer is it is not customary?

A It is not customary.

Q Did you view that particular shipment on more than one occasion?

A No, I was there only once.

Q Did ACLI to your knowledge ever issue any instructions to Mexican Line concerning a cargo of cocoa butter?

A No.

Q To your knowledge, sir, is there any requirement for temperature control of any kind in dealing with cocoa butter

A I believe there is a registration to stow away from machinery and boilers, but beyond that I know of no requirements.

Q Other than that there are no specific requirements?

A Not to my knowledge.

Q Is that true, sir, both as to summer and winter?

A Yes.

Q Has ACLI to your knowledge communicated with Industrializadora concerning the method of packing the cocoa butter in question?

A I have no knowledge of that.

Q Is ACLI to your knowledge still receiving shipments of cocoa butter from this same shipper?

A Yes.

Q To your knowledge, sir, are the cartons in which the shipments are arriving currently in the same cartons that were used in 1968?

A They seem tobe, yes.

Q Have you yourself, sir, had any experience in packing and cartonizing of a commodity such as cocoa butter?

A No, I have not.

Q In the other commodities that are handled by ACLI have you seen cartons with metal strapping around them?

A I don't recall any.

MR. MOLANPHY: I have no further questions.

THE COURT: Any questions, Mr. Camera?

MR. CAMERA: Yes, your Honor.

CROSS EXAMINATION

BY MR. CAMERA:

Q Were you present when the cargo was discharged from the vessel?

A Yes.

Q Would it be fair to say that you can make no comments as to the condition of the cargo when it was discharged?

A That is correct.

Q Mr. Lovitts, did you observe any hooks being used on this particular cargo while youwere there?

A No.

Q How many times have you observed cargo of cocoa butter on a pier?

A Many times. I find it difficult to come up with a number.

Q Well, every time a cargo is discharged you don't go down ad observe it being discharged at the pier, do you?

A No.

Q And you don't observe where it is placed on the pier after it is discharged?

A Not as a rule,no.

Q On what occasions do you go down to the

pier to observe it?

A Well, apart from the unusual damage condition that we are discussing now, I would be down for, say, cocoa beans or other cargoes that are on the vessel and observe shipments of cocoa butter that have been discharged from that same vessel or other vessels.

MR. CAMERA: I have no further questions.

THE COURT: Any redirect, Mr. Meeker?

MR. MEEKER: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. MEEKER:

Q You replied to a question of Mr. Camera's as to whether you noticed any hooks being used on this cargo when you were at the pier in the negative. Was this cargo being handled at the time you were on the pier?

A No, it was at rest.

MR. MEEKER: Your Honor, at this time I would like to offer in evidence Defendants' A, B and C.

MR. MOLANPHY: I object to those. The surveyor will be here to testify.

MR. MEEKER: That is not true as to this particular survey.

MR. MOLANPHY Then I will definitely object to B and C.

MR. CAMERA: I object to each of these, your Honor.

THE COURT: You don't object to A?

MR. MOLANPHY: I join in the objection, your Honor, of all three.

THE COURT: Let me see them. Well, first of all, I think we hae got these things balled up. A seems to be the addendum, B is really the survey report as I read it.

THE WITNESS: Yes.

THE COURT: Well, we ought to transpose A and B.

I am not going to receive these now, Mr. Meeker, because, as these gentlemen say, the facts contained therein are metters which are in issue in this case and we can't allow that without some ability to cross examine.

MR. MEEKER: The reason I offer them, the door was opened by counsel.

THE COURT: We are not impressed by that.

MR. MEEKER: I have no further questions.

THE COURT: Thank you, Mr. Lovitts. You may step down.

THE WITNESS: Thank you.

(Witness excused.)

MR. MEEKER: I would like to call Mr. Stanley Wald.

S T A N L E Y I. W A L D, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEEKER:

Q By whom are you employed?

A S.A. Wald & Company.

Q In what capacity?

A General manager and officer of the firm.

Q What is the nature of the business?

A Reconditioning and salvage.

Q Of what?

A Generally commodities shipped in the marine trades.

Q How long have you been so employed?

A I have been employed personally, I suppose, about 35 years.

Q In May and in July of '68 did you perform certain services for ACLI International?

A Yes, I did.

Q Mr. Wald, I show you two documents, Plaintiff's Exhibits 7 and 12. I wonder if you can identify them for me.

A No. 7 is our invoice for the reconditioning of

601 cartons, damaged cartons of Mexican cocoa butter off the S.S. Campeche, arrived May 31, '68, which indicates the quantity received, the reconditioning out turn and our charges.

No. 12 refers to 851 cartons of damaged Mexican cocoa butter off the Campeche. It doesn't indicate the date of arrival on paper, which shows our reconditioning out turn, as well as our charges, and a report of our sales of a portion of the lot.

Q Now, Mr. Wald, were you paid for the services that are reflected on these invoices?

A We were.

Q In full?

A In full.

Q Do you have any personal recollection of the work performed efore the May, 1968, out turn?

A Yes, this was a fairly typical operation for cocoa butter, which the cartons arrived somewhat broken, perhaps stained, and contents exposed. We opened the cartons, checked the contents, reboxed them and recartoned them, and when necessary we may scrape the surface of the bar if there is any indication of any damage to the butter itself. That is on the No. 7.

Q For July 1968, do you have any personal recol-

lection of that, the services performed reflected by the invoices?

A May I have the question?

Q Do you have any personal recollection of the July services?

A Very much, yes.

Q Could you tell us, roughly?

A In this particular case a very unusual job and as a result it was necessary or was considered a good idea for me to go down to the pier to personally inspect this particular lot before making arrangements to recondition it, and we did. And the results are indicated on your No. 12.

Q Do you recall when you persoanlly visited the pier?

A My guess it was during the summer, I suppose, of '68. I don't know offhand exactly what date it was.

Q Do you recall being at the pier? Do you recall the circumstances?

A Yes, I was there and examined it, and I noticed that a portion of it, as I remember it, about half of the lot was still on the pier, fairly heavy damaged, but more or less of a problem we are familiar with, and then about half of it, or a little less than half of it, the cartons were

stowed outside of the pier, as I remember, out in the open in which the contents were soupy, the butter had already gone from the solid form to a viscose, soapy state.

Q Would you recall about how many days after discharge this was?

A No, I wouldn't know.

Q What did S.A. Wald do with respect to this July, 1968, shipment?

A Well, the first thing, we had to make special arrangements to take delivery of the portion which had turned soapy, because to move it, the contents would all spill out out normally. But we finally came up with an idea where we sent a refrigerator or truck to the pier to be there first thing in the morning and to put the cartons -- well, the idea of getting there first thing in the morning, because the temperature would cool down and reduce the soapiness to perhaps a viscose, messy, I should say, and then we put it on a refrigerated truck and let it stand there all day just keeping the temperature as low as it could go so as to get the butter to regain its solid form before sending it over to our warehouse.

Q This was in respect to what lot?

A The second lot, which you call the July lot.

Q But as I understand, you said half the lot was

in the pier, half outside?

A Yes, this reflected about half the quantity. My recollection was a bit less than half, something approaching something less than 400 cartons came in the reefer truck, the refrigerator truck, and the others were solid enough to move in a regular truck.

Q Where did these cartons that went on the reefer truck come from? Were they on the pier?

A No, these were the ones that were off the pier, although -- and I am a little vague -- this is quite a few years ago -- I think that part of our instructions were to put that portion -- and I may be vague on this -- to put that portion back under cover, too, in the hope of trying to get it away from the sun. But I am not quite sure. But, in any case, it was loaded first thing in the morning onto a reefer truck.

Q The cartons that are reflected on your invoices, were all these cartons externally stained?

A Yes, as far as I can remember. This is a very heavily damaged lot, and my recollection is all of these cartons were definitely stained, mostly more.

MR. MOLANPHY: I am going to object to the witness' answer in this respect, that I believe Mr. Lovitts testified that another individual was hired specifically

to do surveying, whereas Mr. Wald's comapny was hired mainly to recondition.

THE COURT: Well, in any event,I am going to allow it to stand.

Anything else?

Q Mr. Wald, how many shipments of cocoa butter does your company handle per year on an average?

A I would say on an average of about 30 or 40 lots.

Q Are you personally familiar with the physical properties of cocoa butter?

A Only from inspecting it and working with it. I can't give you any technical knowledge as to the chemical constituency or anything like that.

Q I take it that maybe you can enlighten me, does S.A. Wald do any sorting? Does S.A. Wald supervise any delivery?

A No. The only sorting that may be done is incidental to our reconditioning and separating the cargo to various degrees of damage or packaging, but we don't get involved in any way sorting on a pier. That is not our function.

Q In other words, S.A. Wald is only concerned with damaged cargo?

A That is right.

Q Apparently, you have done 40 or so shipments per year of cocoa butter. How does the July '68 shipments stack up say against your normal average discharge?

A It stands out in my memory about as the most severely damaged plot we have had.

MR. MEEKER: I have no further questions.

CROSS EXAMINATION

BY MR. MOLANPHY:

Q Mr. Wald, I believe you said that your company does about 30 or 40 lots of cocoa butter reconditioning each year.

A This is just a general statement. That is right.

Q Out of those approximately how many are the request of ACLI?

A I would guess -- I'm just estimating -- maybe 50 per cent.

Q So that they would be requesting your reconditioning services anywhere between 15 and 20 times a year?

A I would guess so.

Q In our experience, sir, of the lots that you reconditioned at the request of ACLI, about what percentage of the entire shipments required your reconditioning

services?

A Oh, virtually all require some degree of reconditioning. It depends upon just the extent of damage, whether the carton alone is damaged, whether the bar itself, the butter itself is damaged, and to what degree it is damaged. So I would say every lot has to be damaged to some degree.

Q Does it depend, sir, on where the particular cargo has been stored aboard ship?

A I am sorry. I don't get involved in that. We don't get involved in this part of it. Our interest only begins from the time we are told that there are damaged cartons and they want us to work with it or do something with them.

Q By the way, sir, where are your facilities?

A 36 Essex Street, Jersey City, New Jersey.

Q When your company performs these reconditioning services, do you repack them in cartons that are somewhat similar to the cartons that are here?

A In most cases, yes, we will try to put it back into a similar carton, more or less the same size. However, sometimes we have problems where the bars are distorted and they don't fit into any carton, and so we might put it into bags, rather than a carton.

In most cases we try to put it back into a carton so as to its maintain its typical normal appearance.

Q In your experience, sir, is it good practice to ship domestically and for export in the same type carton?

A We use that as a general rule of thumb, yes. It is the best way of shipping. The trade accepts this. It is the type package they expect to get, so we do it if at all possible.

Q On cartons such as this one, sir, have you had experience to put strapping, metal strapping of any kind around such cartons?

A No, we don't do any strapping at all. We just use tape.

Q Have you seen strapping used on cartons of this type?

A I have a vague recollection perhaps on several instances, but the great overwhelming majority are without straps.

Q Would the strapping lend any structural support to the carton?

A Yes, the more strength you give the package the better, of course.

Q And that is the purpose of strapping a carton such as this?

A I would imagine so. If for some reason the package was not considered strong enough, I suppose you could put strapping on, or just as an added protection.

Q Is there a need, sir, for a strapping where the commodity thatis carried itself lends structural support to the carton?

A I am sorry. I missed that.

Q Is the idea of using strapping of less practical benefit when the commodity that is inside actually lends structural support to the carton?

A I would think so.

Q And when cocoa butter softens, does that take away from the structural integrity of the carton?

A I would think so, yes.

Q Cocoa butter when it starts to get softer inside a polyethylene bag, for example it does tend to lose its original shape?

A Well, I don't know how to answer that. I am not sure whether it would lose its shape just standing there or whether it is a fact in conjunction with the weight of the other cartons pressing against it, and there is no longer a solid surface.

Q One of the basic considerations for packing is a consideration of just how much pressure will be exerted

on the carton from above? Is that right, sir?

A Yes, sir.

Q Now, after you have recartonized, say, one of ACLI's shipments and you store it in your facilities to await shipment, could you tell me approximately how high you would stack these?

A Well, generally we would go five high on a pallet and then stack it two two pallets high. That would be a typical pack.

Q And you don't go any higher than that?

A Very rarely. Very rarely. There is a space danger. We certainly would not want to do it. We always have a ceiling limit, so that it is rare that we have had it more than two pallets high.

Q Are you also considering the possible effect of pressure on the lower cartons?

A Yes, that would be a factor,too. After all, we are repacking it. We like the package to emerge looking as new as possible.

Q Would you counsel against stacking cartons such as these say 30 high?

A I eon't think I would be qualified to give you the strength factor. My own feeling is it might be kind of high.

Q Because of the pressure exerted on the load?

A We wouldn't do it in our place. For one reason, we can't go high, and under no conditions would we do it. But I don't know whether those cartons are capable of going that high. I never tested them.

Q Do you read Spanish, sir?

A No.

Q But you would definitely counsel against stacking anything 30 high?

A I would not want to get into a debate with anybody. If you ask me my opinion, I would rather not.

Q To go back for a minute, sir, where we are dealing with a commodity such as cocoa butter which would lose its original shape if it gets soft, will you tell me the effect

on the lower cartons where you have them stacked in excess of say 12 high and the cocoa butter has started to turn soft or melt?

A My guess is you would begin to get a crumbling effect.

Q And the polyethylene bag, say for example, this particular carton itself was exposed to a temperature which would cause the cocoa butter inside to melt, would that in and of itself with this single carton cause staining of the outside carton?

A Oh, I think you would begin to get the melting. I don't think the polyethylene liner would keep the contents from spreading out. That is my feeling. I really am not qualified to come up with a definitive answer.

Q If you had a carton such as this stack in excess of 10 or 12 high, up to, say, 30 high, and the cocoa butter inside the polyethylene bags had started to melt, what would be the effect of the pressure on the lower cartons?

MR. MEEKER: I object to the question. The witness is not qualified to answer it.

THE COURT: He has already answered it. I sustain the objection. He told us what his opinion is.

Q On the May 1968, shipment were you shown a report

of the surveyor before you did any of your work?

A To the best of my recollection, no, we do not normally receive a surveyor's report.

Q Were you told that such a survey had been conducted on behalf of ACLI?

A I can't answer that. I don't remember. I don't know.

Q Could you tell me for what other cocoa butter importers you perform service for?

A Gill & Duffis, General Cocoa, those are the three among them that make up the bulk of our work. We are called in by other importers, McClure.

Q Are they in Connecticut, sir?

A McClure is in Connecticut, that is right.

Q Do youknow from whom they receive shipments?

A I do not.

Q Are you familiar with the cartons in which McClure receives shipments?

A I can't really. We think in terms of the country of origin, Mexican cartons and Brazilian cartons, and different shapes and weights and so forth. I would not be able to tell you anything about McClure's.

Q Specifically, shipments that McClure receives from Mexico?

A I don't know whether we ever saw anything, whether we had a McClure lot that was from Mexico. We have not had many lots from McClure, so I couldn't tell you.

Q Do you remember where any of those lots came from?

A No.

MR. MOLANPHY: That is all.

MR. CAMERA: No questions.

REDIRECT EXAMINATION

BY MR. MEEKER:

Q Mr. Wall, the testimony that you have given on cross examination which was directed to the cartons in the packing and the stacking of cocoa butter, is that confined to damaged melted cocoa butter?

A Yes, we have nothing to do with the stowing on vessels. The question I thought was directed to what we do in our warehouse, and that was the extent of my answer. I hope it won't be in any way associated with stowing of a vessel, because we have no expertise whatever in that respect.

MR.MEEKER: That is all.

THE COURT: Thank you, Mr. Wald. You may be excused.

(Witness excused.)

THE COURT: Well, gentlemen, rather than starting

with another witness I suggest we take lunch and we will resume at 2 o'clock.

Do you have any people coming from Mexico, Mr. Meeker?

MR. MEEKER: I have none. I have two witnesses and a deposition.

THE COURT: But you don't want to bring anybody up here?

MR. MEEKER: No live witnesses.

THE COURT: 2 o'clock, gentlemen.

(Lunchon recess.)

AFTERNOON SESSION

2:00 p.m.

THE COURT: Mr. Meeker?

MR. MEEKER: I call Mr. Richard Freyer.

R I C H A R D T. F R E Y E R, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEEKER:

Q By whom are you employed?

A Walker Weighing Corporation.

Q Whom were you employed by in '68?

A Walker Weighing Corporation.

Q What is the function of Walker Weighing Corporation?

A Walker Weighing is naturally a weighing corporation, an inspection corporation, a supervising outfit. The main purpose of our company is to weigh cargo on a pier, and at the time we do supervise and inspect.

Q Any particular type of cargo?

A Mainly we deal in coffee, cocoa, spices, pepper and by products of cocoa.

Q That wouldinclude cocoa butter?

A Cocoa butter and chocolate liquor.

Q What is your capacity with Walker Weighing?

A I am a weigher.

Q Was that the same capacity in 1968?

A Yes.

Q How long have you been employed by Walker Weighing as a weigher?

A Since 1961. It will be 15 years next year.

Q Mr. Freyer, do you recall performing any functions for ACLI, the plaintiff here, with respect to a cargo of cocoa butter discharged in May of 1968 at Pier 20, Staten Island?

A Yes.

Q What did you do for ACLI on that occasion?

A May I consult my notes?

Q Yes.

A In May we are talking about? Right.

Q That is correct?

A The Campeche arrived May 31st. Well, actually we had an order to supervise 2500 cartons. We had an order to supervise to Penn Central. That was going to be the carrier.

Q Supervise? What do you mean? Supervise what?

A Well, go down to the pier by ourselves in a

weighing operation. We would have two men to handle the cargo. In a supervising operation we would do it by ourselves. And if we had any exceptions or notations, then we would have the pier set aside, the acceptance or notations, rather than have our own men do it. So I would be by myself on a supervision job.

With a weighing job I would have two additional men.

Q I think I interrupted your answer.

A No. That is all right. Well, anyway, the first time I came down to the pier -- in fact, it was not in May; it was on June 17th -- we got a call that a Penn Central lighter had started picking up 2500 cartons and there was no supervisor there. We had not been notified. So we didn't know that we should be there. I got to the pier at 1:45 and I observed approximately 1000 cartons on the lighter which hadn't been supervised, and I gave an estimate that at least 50 per cent was stained on the lighter, at which point the operation ceased. They later took the cargo off the lighter and put it back on the pier.

Q I take it you were personally at the pier supervising this?

A Yes, I was.

Q Did you perform any other service for ACLI with relation to this cargo?

A Well, in regards to that,we were then given orders to sort the cargo which had been on the lighter, which was taken off, and now the remainder of 2500 cartons were on the pier. We received instructions from A.C. Israel to sort this cargo as to sound cartons, stained cartons, cartons that were broken, cartons that were exposed, and I went down with my own gang and proceeded to sort the cargo. This was done on June 19th and 20th. The results of which we found 194 sound cartons, 175 stained cartons, stained by the contents of its own nature, and 601 stained cartons with the contents exposed, to a total of 2500.

Q Now, I take it you are reading from copies of invoices? Is that correct?

A Well, I am reading from copies of orders from A.C. Israel and from copies of invoices both, with hand memos, which is bringing back to my mind exactly what happened.

Q Let me ask that we have this marked for identification as plaintiff's next exhibit.

(Plaintiff's Exhibit 17 was marked for identification.)

Q Now, Mr. Freyer, with respect to the invoices, were they paid by ACLI to your knowledge?

A I would have to say so. I couldn't vouch for it. But I don't think that ACLI ever holds back any payment on anything for any reason.

Q Mr. Freyer, when you first arrived at the pier on this particular occasion how was the cargo stowed on the pier, if you recall?

A On pallets, approximately oh, 60 to a pallet.

Q How high were the boxes on each individual pallet?

A The boxes would be four high as a rule, sometimes five, but ordinarily four.

Q Were there any pallets put on other pallets?

A It is normal on a pier to go five or six pallets high.

Q In other words, you are saying 25 to 30 cartons high?

MR. MOLANPHY: I am going to object to what the witness considers normal on a pier.

THE COURT: I would allow him to give what he considers to be normal for stowage of cocoa butter on pallets on a pier.

After all, he is in the weighing and inspection business.

MR. MEEKER: Maybe I can clear this up, your Honor.

Q Mr. Freyer, how many shipments, arrivals of cocoa butter cargo has it been your experience to supervise or sort?

A Individual orders, you mean? Individual shipments?

Q Yes.

A Individual orders in the hundreds; individual shipments in the hundreds.

Q When you say normally, you are talking about --

A I am talking about normal.

Q But you are talking from experience in the hundreds?

A Yes.

Q Now, Mr. Freyer, would you consider the May, 1968 arrival a normal outturn of cocoa butter?

A No, I would say there was an excessive number of stains.

Q What would a normal carton of cocoa butter look like as it came off the ship?

A A normal carton of cocoa butter?

Q Yes.

A Right there (pointing).

Q Mr. Freyer, did you also supervise the delivery or perform some function for ACLI with respect to its

July, 1968 arrival or the Campeche?

A Yes, we did.

Q What did you do?

A We had an order to supervise 2400 cartons. The order is dated July 23rd. What happened originally with this I really don't know, but it seems to my recollection anyway that I went down to the pier on July 30th not in relation to this cocoa butter, in relation to something else, and I saw the condition of the cargo and I reported it to Walker Weighing, who, in turn, reported it to A.C. Israel.

Q May I interrupt for a second? What made you report this particular cargo to your superiors?

A Well, when I walked down and I see A.C. Israel cargo, General Cocoa cargo, it usually means that we will have something to do with it, even if we don't have anything to do with it at that particular time. You can say it sounds good comin- from Walker Weighing to report this condition to it.

Q What condition?

A The condition was so bad that the steamship company put outside the dock approximately 350 to approximately 400 cartons melted and heavily damaged. Now, this is aside, of course, from the pier stuff. On August 1st A.C. Israel

gave orders to sort the remainder of the cartons on the dock. We had had an order to supervise again for 2400. And trucks came in. This was the occasion on July 31st. Now I see it. The following day a thousand were delivered, sound cartons, and there were 1400 left on the dock, either damaged and/or short. That is when A.C. Israel then gave orders to sort the 1400.

So again I went in with a gang, acrew of men, and we sorted, the result of which is out of the 1400 we found 502 cartons stained by nature of its own contents; we found 449 stained by nature of its own contents and broken stained contents exposed; the remainder, 449 were damaged and/or short because the remainder were outside the pier in one big heap. The damaged and/or short is also noted that this is the balance that was set aside at the time of discharge as heavy damaged, melted butter, broken contents, contents exposed. It was our opinion that they were a total loss. That was my opinion.

Q You personally recall being at the pier for this particular job?

A Yes.

Q Now, you have stated that you have supervised orhave been present for cocoa butter discharges in the hundreds. How would this particular July discharge stack up

with other discharges you have attended?

A It is very rare we are at a discharge from the ship itslef.

Q How would this particular delivery stack with others that you have supervised?

A I think this particular July delivery, the cartons were the worst because they were outside the pier, and that was the worst that I have ever seen cartons of cocoa butter.

MR. MEEKER: I have no further questions.

CROSS EXAMINATION

BY MR. MOLANPHY:

Q On both of these occasions some of the cartons turned out in good condition and some were stained?

A Yes, sir.

Q Do you know where in rdation to the height of the stow aboard the vessel the damage casrtons were carried?

A No, no, sir, not with the vessel. I would not know anything about where the damage was in the vessel or anything like that.

Q So you don't know whether the cartons that were actually damaged were at the bottom of the particular stow or near the top?

A No, sir.

Q Do you know where aboard the vessel any of these cartons whethey were in good shape or in bad shape were, in fact, stowed?

A No, sir.

Q Was stevedoring company was at Pier 20, Staten Island, in May and July of 1968?

A I am guessing, but I would have to say Pittston.

Q Are they still there today?

A Pier 20 has been closed for a year.

Q How frequently in the time that we are talking about, in 1968, was Walk Weighing called in by ACLI to supervise a discharge of cocoa butter?

A I would have to say offhand at least 7, 8, 10 ships, if you're talking about Mexican cocoa butter. I really could not qualify it that way, but it could be Brazilian cocoabutter. WE would be performing the same service with Brazilian. But with cocoa butter, with Mexicans, it was quite heavy that lyear.

Q On each occasion that you did this supervising work on behalf of ACLI would you come across a percentage of cartons that were damaged?

A Usually you would find some cartons, expecially in the summertime, that were damaged. You could also have a supervision job where nothingwas damaged at all,

with the exception of a broken sample carton which was so noted by the sampler.

Q You say especially in the summertime you would find damaged cartons? Is that right?

A That is right.

Q And on the ACLI imports from Mexico, about what percentage of the entire shipment would you say would be normal to find damaged? Or on an average? Maybe that is a better word than normal.

MR.MEEKER: I object on the grounds it is not normal to find that.

THE COURT: The witness has started to indicate he does not understand the question, and I share his concern, too. Put it differently.

Q Of the shipments that ACLI received of Mexican cocoa butter in the summertime that you personally have supervised, what would you say is the average percentage of cartons that turned out damaged?

A Are we talking about 1968 or --

Q Generally.

A Generally?

Q Yes, sir.

A Generally I would say 5 per cent,10 per cent tops.

Q How does that compare with shipments received from

other sources other than Mexico?

A Approximately the same. Approximately the same.

Q Were you aware, sir, that in connection with the May, 1968, shipment that a survey had been performed on behalf of ACLI?

A No, sir.

Q Did you inquire at that time as to whether or not such a survey had been conducted?

A No, sir.

Q Are you familiar at all, sir, with the packaging of a commodity such as cocoa butter?

A Yes, sir.

Q Have you yourself had occasion to do packing of cocoa butter?

A Yes, sir.

Q Where was that?

A Pier 20, Staten Island.

Q With Walker?

A Yes.

Q Did that involve shipments that came from Mexico?

A Yes.

Q From the same port, Coatzacoalcos?

A This same ship, we recartonized 1700 on this par-

ticular ship at Pier 20, at the pier.

Q You did the recartonizing of it?

A Yes, sir.

Q And at the time you recartonized them did you put them in cartons similar to the one that is here on the jury box rail?

A Yes, I remember we had a problem, we had to go to a box manager and get exactly the same size, because if it is one inch too much this way or one inch too much the other way it is going to crush. So we bought cartons exactly the same dimensions as that.

Q Is that assuming that the contents have a particular dimension of themselves?

A That is correct.

Q And if the contents somewhere along the line lose that dimension of its own is there a tendency then for the carton itself to become crushed?

A Well, the only thing if the contents were distorted in some way, the only way they could become distorted would be for the carton to break and have the contents exposed. This is where when we had something like this we would go to S.A. Wald, to a salvage house, where he would have room in his own salvage house to recartonize things like this. I am talking about perfect cartons, except they

were stained and the dimensions were exactly the same. They were not distorted.

Q The contents themselves would still be firm?

A That is correct.

Q Do you have any experience with recartonizing when the contents themselves are no longer firm?

A No, we recommend then that you send it to a salvage house.

MR. MOLANPHY: Thank you, sir..

CROSS EXAMINATION

BY MR. CAMERA:

Q Mr. Freyer, I believe you testified earlier that this discharge was the worst you had ever seen, that is, the cartons that were outside the pier? Is that correct?

A That is right.

Q Did you have occasion to observe the cargo as it was being discharged from the ve-sel?

A No, sir.

Q Would I be correct in saying that you cannot tell this court whether or not the condition of that cargo had changed from the time it was discharged until the time you saw it?

A That is correct, I did not see the discharge of the ship.

MR. CAMERA: Thank you.

REDIRECT EXAMINATION

BY MR. MEEKER:

Q Mr. Freyer, had youever seen shipments of cocoa better outturned during the summer with no damage?

A Yes, sir.

MR. MEEKER: No further questions.

THE COURT: Thank you, Mr. Freyer, you may be excused.

(Witness excused.)

MR.MEEKER: The plaintiff calls Captain Peter Beckett.

P E T E R B E C K E T T, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEEKER:

Q By whom were you employed in 1968?

A Toplis & Harding.

Q What position did you hold?

A Staff surveyor.

Q How long had you held that position with Toplis & Harding?

A At the time about 18 months with Toplis &

Harding.

Q Prior to being employed with Toplis & Harding where were you employed?

A T.D. Baker & Company, which is also a marine surveying company.

Q How long were you employed there?

A Approximately three years.

Q Prior to that stint with T.D. Baker by whom were you employed?

A I was assistant operations manager to American Himisphere, American Engineers, which is a local steamship agency.

Q And prior to that?

A I was at sea, employed by Alfred Holt & Company, Liverpool, England.

Q What licenses do you hold, Captain.

A I have a British master's license.

Q When was that license issued?

A In 1956.

Q Is that license for unlimited tonnage?

A Yes, it is.

Q Captain, did there come a time in July or August of 1968 where you were called to survey a cargo of cocoa butter at Pier 20 in Staten Island of the Campeche ?

A Yes.

Q By whom were you called?

A Well, the assignment came in the office from A.C. Israel.

Q Before we go any further, what are the duties of a cargo surveyor, staff survey with Toplis & Harding?

A Basically when a claim is reorted you would go either to the premises where the cargo is located at that time and examine it for the purpose of establishing the extent of loss and also to attempt to minimize the loss as far as possible.

Q Did you personally go to the pier at Staten Island to survey this loss?

A Yes, I did.

Q Do you recall the facts surrounding your visit to the pier?

A I don't recall exactly, but if I could have a copy ofthe survey report It would probably help me.

MR. MEEKER: Your Honor, this hasbeen marked for identification by the defendant as A.

THE COURT: A, B and C, including the two addenda.

MR. MEEKER: This is the July.

THE COURT: D and E?

Q Captain, could you tell us what you found

when you first visited the pier?

THE COURT: Before you do that, if I may interrupt, when did you first go, Captain Beckwitt?

THE WITNESS: August 1st was my first visit. I went to the delivery office on arrival at the pier, first of all, to introduce myself, and also to find out how much, if any, of the shipment had already been delivered, and I was informed that 5,000 cartons had been delivered without any exceptional problem and 1400 cartons remained on the pier.

I then went on the pier and I saw the location man and he pointed out the stack of cartons within the pier and also said some of the cartons were stowed outside on the bulkhead. The cargo within the pier was on pallets, as I recall, four cartons high, and also, as I recall, about five pallets high.

I think I noted that approximately 50 per cent of these cartons were heavily stained, with covers torn, contents exposed; the balance were covers stained but not necessarily damaged by themselves.

THE COURT: I am a little confused. Are we talking about the 1400 cartons?

THE WITNESS: Part of the 1400 cartons which were within the pier shed.

THE COURT: In other words, youdid not check the 5,000 cartons?

THE WITNESS: No, they were gone from the pier already.

THE COURT: So we are talking about 1400.

THE WITNESS: Yes. Afterwards I went outside into the stringpiece and the bulkhead at the head of the pier and there was a heap of cartons which was almost impossible to establish the number, and they were just heaped there and they were broken and torn, the contents was liquid and running out. Without handling each one of these and losing whatever was in them, it would be impossible to count. But I made a note here in excess of 150 or in this location.

Q Did you subsequently return to the pier and make a second inspection?

A Yes, I returned on August 5th with Mr. Lovitts of A.C. Israel and with Mr. Wald of S.A. Wald & Company.

Q What was the purpose of your visit on the 5th?

A My initial recommendation was this be removed from the pier as soon as possible and placed in the warehouse in order to minimize any further loss. The problem was that no trucker could be found to accept the cargo as I understand it.

Q Why was that?

A Because of staining and particularly the ca ons with the liquid butter, no truckmen wanted to put this inside his truck because he would have to clean it out very extensively before he took any other shipment.

It was agreed that Mr. Wald would come down and we would consult with him and decide what was the best method of disposing of these cartons.

Q What was finally agreed to as far as the best method?

A Well, first of all, the idea was that space should be rendered in Pouch Terminal, which is located adjacent to the pier, that Mr. Wald would supply clean drums and that liquid butter would be poured into these drums for removal, for ultimate removal from the pier. Subsequent to that it was agreed that the procedure which Mr. Wald outlined here today would be followed, that is, a refrigerator truck would be brought in early in the morning and the viscus butter would be placed in this refrigerator truck so it would solidify.

Q Do you know if this was actually carried cut, the recommendations that you made?

A I was not aware at that time that the refrigerator truck was used as we left.

Q Did you consider the cause of action which was ultimately taken the most reasonable one insofar as economically handling the situation?

A I think so, yes, because the main thing was to get it out of the open air in which it was located and before it all disappeared or leaked out and was lost altogether. A certain amount was saved, as I would have to say, the best efforts were maintained to minimize the loss.

Q But of the 1400 cartons do you know how many a claim was made for?

A I believe it was 490.

THE COURT: You mean all but 490 was salvaged?

THE WITNESS: 502 of this 1400 were found in good condition and delivered and the balance would make up the claim.

Q Were you aware of any salvage value that you could attribute to this cargo?

First of all, were you aware of the market value?

A Yes. It would have value provided it was reconditioned, it would normally have the full market value. However, I would say that the part which was liquid would lose a certain amount of market value because it would be impossible to package it in the form in which it was shipped, and, therefore, it would lose a certain amount of

value and it would be sold a certain amount off the market value.

Q Do you know on what that market value would be based?

A There is a report issued, the Sweeney report, which would establish that.

Q I show you two documents and ask you to identify them for me.

A These are the Sweeney reports issued on June 3, 1968 and July 23, 1968.

Q Could you tell the court what the market value is stated to be for cocoa butter on those reports?

MR. MOLANPHY: Are we going to read from the document?

THE COURT: Yes, or put in something more precisely. Do you want to offer these in evidence?

MR. MEEKER: Yes.

THE COURT: Well, let's get them marked.

(Plaintiff's Exhibits 18 and 19 were marked for identification.)

THE COURT: While they are looking at that, is it your intention, Mr. Meeker, to offer the Toplis & Harding survey reports, D and E?

MR. MEEKER: Those were marked by the defendant.

THE COURT: Indeed they were, but if you feel happier we could change the number. My thought is not the nomenclature, the number or letter, but would you like to offer them?

MR. MEEKER: Yes, I would like to offer them at this time, your Honor.

THE COURT: If it would make it more palatable, we could remark them if you like.

(Defendants' Exhibit D and E were marked respectively Plaintiff's Exhibit 20 and 21 for identification.)

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MR. MEEKER: These are still for identification. I would like to lay more foundation for them, if I could.

THE COURT: Mr. Molanphy and Mr. Camera, the plaintiff is offering the Toplis & Harding survey reports and addendum for the July shipment, which have been tastefully renumbered to be Plaintiff's Exhibits 20 and 21. They used to be your numbers D and E for identification. Is there any objection?

14

MR. MOLANPHY: I think the witness has testified and I don't think there is any need for his report.

THE COURT: If that is an objection, it is overruled.

MR. CAMERA: May I have the same objection?

(Plaintiff's Exhibits 20 and 21 for identification were received in evidence.)

Q Captain, the Sweeney reports that you are holding, are you aware of any other market report that ses a market figure for cocoa butter on a daily basis?

A Well, the quotations in the various trade journals. I could not give you a name to them. And also in the Journal of Commerce, I believe they appear every so often.

Q Do you consider the Sweeney reports authoritative in the field of cocoa buttter?

A Yes.

MR. MEEKER: I ask that Exhibits 18 and 19 for identification be received.

MR. MOLANPHY: No objection.

MR. CAMERA: No objection.

(Plaintiff's Exhibits 18 and 19 were received in evidence.)

Q Captain, about how many shipments of cocoa butter have you surveyed during your tenure as a surveyor?

A I would say probably twenty..

Q Have you ever surveyed a shipment of cocoa butter in which the cartons were strapped with metal or plastic straps?

A No, never.

Q In your opinion would that aid in preventing damage to cocoa butter?

A In my opinion it would not because if you put a metal strap around a carton of this nature, which is a single wall cardboard carton, I would think that it would tend to cut into the carton causing more damage than it would prevent.

Q In other words, much the same as this twine has cut into the carton?

A Yes, but even more so, because it is metal, not twine.

Q In your experience you stated that you have surveyed numerous shipments. How would this stack up as far as other shipments, as far as the extent of damage and that sort of thing?

A The July '68 shipment was probably the worst I have ever seen.

MR. MEEKER: No further questions.

CROSS EXAMINATION

BY MR. MOLANPHY:

Q Captain Beckett, how hot was it in New York when you went down in July '68?

A If I could have my survey report, I have a note in there.

THE COURT: Here it is.

THE WITNESS: Thank you. On August 5th the first day I was present, the maximum temperature was 92 degrees, and on August 5th, the day of my second visit, it was 88 degrees.

Q Do you have any knowledge of the maximum temperatures in the Port of Coatzacoalcos in December of 1968?

A No, I don't.

Q In the summer of 1968?

A No, I don't.

Q Captain Beckett, when you are called in to conduct a survey on a cargo such as cocoa butter it is because some cargo has been damaged? Is that right?

A Yes.

Q Now, the cartons of cocoa butter that you surveyed on this particular occasions did not have strapping around them, did they?

A No, they did not.

Q Have you ever been called in to survey a shipment of cocoa butter in cartons where they did have metal straps around theinside?

A No.

Q I believe you used the term single -- what was the

other word -- in describing the carton?

A Single wall corrugated cardboard.

Q Have you ever seen corrugated cardboard cartons with an interior wall used in the shipment of cocoa butter?

A No.

Q Do you think that such an additional interior wall would lend structural support to the carton itself?

A Undoubtedly it would, yes.

Q Would you find such a carton preferable to the one that is single walled?

A It would be preferable, but I don't think it is essential, because cocoa butter is carried normally in this manner and not every shipment is damaged.

Q Captain Beckett, have you been called in to conduct surveys by ACLI on a number of occasions?

A Not personally.

Q How many times have you personally surveyed for them?

A Well, when I was working for Toplis & Harding I would imagine half a dozen times.

Q Was it always cocoa butter?

A No, sir.

Q Approximately how many times was it cocoa butter?

A I would say three or four times.

Q Did you survey for others where shipments of cocoa butter were involved?

A Yes.

Q Of the three or four times that you surveyed for ACLI tell me approximately what percentage of the entire shipment you found to be damaged?

A Without reference to my records it would be difficult, but I would estimate probably 10 to 20 per cent.

MR. MEEKER: Your Honor, if I could have clarification of that last question, 10 to 20 per cent of the cartons were damaged or 10 to 20 per cent of the value was gone? I am not sure.

THE WITNESS: I was about to qualify that. Normally it would be the total damage which would include sound cartons which were merely stained, as well as damaged cartons.

Q Captain, are you familiar with the work called Modern Export Packaging as publishec by the United States Department of Commerce?

A I have seen it.

Q Do you consider it as authoritative in the field of modern packing?

A Yes.

Q I would like to read you a sentence appearing on page 109. Directly above the sentence I am to read is the heading"Metal Strapping Fiber Containers,"and the sentence is,"Export shipemnts in corrugated or fiber boxes are frequently strapped or wired."

Do you agree with that?

A Yes.

Q Do you think that is a desirable method of reinforcing packaging?

A I would say it depends on the contents of the package.

Q Among the significant factors in determining proper packaging is it resistance to compression?

A Yes.

Q Now, if you have a commodity which in and of itself has an immutable shape, then the ability of the carton to withstand compression has less significance, doesn't it?

A Could you repeat that?

Q I will try. If you have a product which is of a consistent shape, never changes, and is rigid, the ability of the carton to withstand pressure is of thus significance, is it not?

A Yes.

Q Now, if youhave a commodity which can alter its

shape within the carton, then the ability of the carton itself to withstand pressure becomes more significant? Isn't that right?

A Yes.

Q Would you consider cocoa butter to be in that latter category of commodity, namely, one which can lose its shape?

A The carton of cocoa butter, I would say, can lose its shape to some extent without damage occurring because of the nature of the product. It is compressible.

Q It is compressible?

A It can change its shape without becoming damaged, is what I am trying to say.

Q What happens when cocoa butter, for example, begins to melt or soften? Does it change shape?

A It would do so if it had any pressure on it at all, yes.

Q Even though it is contained within a polyethylene bag?

A Yes.

Q Have you ever seen cocoa butter actually packaged from its point of origin?

A No, I have not.

Q Are you assuming, sir, that cocoa butter is put

into the polyethylene bag when it is solid?

A I understand -- I can't offer any direct knowledge -- but I understand that it si poured into the bag.

Q And at that time you are assume it had no definite shape?

A I believe -- and I may be wrong here -- but I believe that the bag is placed inside the carton and the product is poured into the bag while the bag is within the carton.

Q You think it would make any difference, sir, if the cocoa butter were poured into the bag before it was placed into the carton?

A It would have to have something to give it a shape, to fit the carton.

Q Captain Beckett, do you have any personal knowledge as to where aboard the vessel the cartons that you surveyed were stowed?

A No, because when I got to the pier the ship was already discharged, I believe it was already gone.

Q Do you know when the ship was discharged?

A She arrived on the 23rd of July, so I assume she started then.

Q You came approximately a week later?

A Right.

Q Then would you have any personal knowledge as to where the height of the given stow was, the cartons that you found to be damaged, were located?

A In the ship, you mean?

Q When I say the height of the stow, whether it was at the top of the stow?

A I didn't see the stow, so I couldn't give an opinion.

Q I would like to read again from Modern Export Packaging and ask you, sir, if you agree with these statements:

"Resistance to compression, for example, is a relatively minor factor when the contents are of such a nature as to support the walls of the container and the interior packing is so designed as to furnish necessary support. Where these factors are not present, the shipper must be certain that the container being used has sufficient resistance to compression to prevent it from caving in when it is placed in the bottom tier of a pile of boxes in a warehouse, pier or steamship hold, and to resist sidewise pressure from other packages forced against it by the rolling of the ship in rough weather."

Do you agree with that?

A I do agree with that, but I believe they are

referring in this case to something which does not occupy the full interior of the carton.

Q In a product such as cocoa butter, if it melts, can lose some of its original shape?

A If it melts, yes.

Q And if a carton such as the one on a jury box rail contains cocoa butter which, in fact, has started to melt, but there is no pressure exerted on it from above?

A You would normally get a certain amount of staining on the box which would indicate that it had had a certain amount of melting.

Q How about if it just became soft? What I am trying to arrive at is, how does it get through the polyethylene bag in order to stain the cargo?

A There would be a certain amount or could be a certain amount of seepage through the seams. I have seen it, in fact, where you open the carton and find there is some loose butter on top of the bag, which is probably from the packing process.

Q The polyethylene bags are supposed to be sealed?

A In some cases no. In this particular type of butter they are sealed.

MR. MOLANPHY: Thank you.

CROSS EXAMINATION

BY MR. CAMERA:

Q Do you have any personal knowledge of the condition of the cargo on the date of its discharge?

A No, sir.

MR. CAMERA: Thank you.

THE COURT Any redirect, Mr. Meeker?

MR. MEEKER: No further questions.

THE COURT: Thank you, Captain. You may be excused, sir.

(Witness excused.)

MR. MEEKER: At this time, your Honor, I would like to offer a transcript of the deposition of Jamie Rosique --

THE COURT: Taken when and where?

MR. MEEKER: Taken at Codanis, Mexico, February 5, 1974, at 10:30 a.m., pursuant to notice dated January 15, 1974.

THE COURT: Is he a party witness?

MR. MEEKER: Mr. Rosique is the general manager of the plant at which this material was produced, the shipper's plant, your Honor.

THE COURT: Any objection, gentlemen?

MR. MOLANPHY: Not from me, your Honor.

I was there.

MR. CAMERA: I was not there, but I have no objection.

MR. MEEKER: At the same time I would like to offer an exhibit that was produced at the deposition.

THE COURT: Well, let's mark the deposition as Plaintiff's Exhibit 22.

(Plaintiff's Exhibit 22 was marked for identification.)

THE COURT: We will mark any appended exhibits tha you want to offer as Plaintiff's Exhibits 22-A, 22-B, 22-C, whatever.

MR. MOLANPHY: For the record I think that transcript contains a deposition of two individuals.

MR. MEEKER: The part I would like to offer is only Mr. Rosque, which goes from page --

THE COURT: Well, I will find it. The main thing I am concerned about now is this exhibit.

MR. MEEKER: The exhibit consists of trucker receipts, Nos. 1634 through 1645.

THE COURT: Are they actually incorporated in the four corners of the transcript?

MR. MEEKER: Yes, I have incorporated them in the transcript. These trucking receipts purport to show the

pickup of the cargo at the shipper's warehouse and delivery to the pier at Coatxacoalcos between the 10th and 15th of July, 1968.

THE COURT: Do you have any objection to those trucker's receipts, gentlemen?

MR. MEEKER: Those trucker's receipts total 6400 cartons.

MR. MOLANPHY: No objection.

MR. CAMERA: No objection.

(Plaintiff's Exhibits 22 and 22-A will be received in evidence.)

MR. MEEKER: I would like to offer at this time the deposition of Tomas Ruiz, S.A. taken through Jose Ruiz, who were the carrier's agents at the port of loading, Coatzacoalcos, taken on February 7, I believe, 1974, pursuant to notice dated January 15, 1974.

THE COURT: Again, at Codanis, Mexico?

MR. MEEKER: No, this is at Coatzacoalcos, your Honor.

MR. MOLANPHY: Your Honor, the witness eventually made two changes in the transcript and signed them. They are not part of the bound copy that Mr. Meeker has.

MR.MEEKER: Perhaps if we could take those as an addition to my exhibit, we can stipulate that the

pages that were corrected will be substituted for the pages in the transcript.

THE COURT: Well, whatever suggestion in order to incorporate the changes. We ought to have those. We will mark this Plaintiff's Exhibit 23.

MR. MOLANPHY: I have no objection to it. We have now corrected the transcript physically.

THE COURT: Good idea.

MR. CAMERA: May I have a copy of this deposition?

MR. MEEKER: Yes, I have one here.

THE COURT: It is Tomas Ruiz, and I think the other gentleman's name is Bartholomo, isn't it?

MR. MEEKER: No, Bartholomo is the shipping agent, a cousin, which is very confusing.

THE COURT: Well, the transcript must show. We should have it reflected in the record.

MR. MEEKER: There is an exhibit appended to this transcript.

THE COURT: Before we go to that, I insist we got to know whose depositions we are talking about.

MR. MOLANPHY: For the record, the name of the company is Tomas Ruiz, but the man deposed was Jose Ruiz, and then it is continued with Mario Ruis, who is the brother of Jose Ruiz.

THE COURT: Now we got it. Satisfied. You say you want some exhibit?

MR. MEEKER: Yes, there is what is called a dock receipt of some sort, issued at the port, which is followed by a stowage list.

THE COURT: Well, let's mark the docket receipt and stowage list 23-A. Any objection to the receipt of that material, Mr. Molanphy?

MR. MOLANPHY: No, your Honor.

(Plaintiff's Exhibits 23 and 23-A were received in evidence.)

MR. MEEKER: I would like to offer at this time the deposition of Ruben Villegas, taken on July 23, 1974, at New York. He is the chief mate aboard the Campeche during the voyage in question.

THE COURT: We will mark that Plaintiff's Exhibit 24.

MR. MOLANPHY: Captain Villegas is one of the two I hope to bring from Mexico.

THE COURT: I take it you have no objection to his deposition on the plaintiff's case?

MR. MOLANPHY: No.

MR. CAMERA: I have no objection.

(Plaintiff's Exhibit 24 was received in

evidence.)

MR. MEEKER: Finally, your Honor, I would like to offer the original of a weather report issued by the government of Mexico and certified by the United States Embassy, the consul at Mexico City, to show the maximum-minimum temperatures for the period in question at the Port of Coatzacoalcos.

(Plaintiff's Exhibit 25 was marked for identification.)

THE COURT: I take it there is no objection to that.

MR. MOLANPHY: With the understanding that there is no indication where in Coatzacoalcos these temperatures were recorded and whether in the shade or in the sun.

THE COURT: Well, I think that would be evident one way or another from the face of the report, like any other report, like the UnitedStates Weather Service report here in New York City, isn't within the shade of a certain building or tree. We all know that. I get your point in the context of this case.

MR. MEEKER: We will stipulate these temperatures were taken in the sun if Mr. Molanphy will go along with that.

(Plaintiff's Exhibit 25 was received in

evidence.)

THE COURT: Is that the plaintiff's case?

MR. MEEKER: I believe that finishes my case.

THE COURT: Maybe we better make sure.

MR. MEEKER: I am relatively certain. I will say I am sure.

THE COURT: Now, as I understand it, Mr. Molanphy, your witnesses are all coming from Mexico or somewhere else?

MR. MOLANPHY: One from out of state, two from Mexico.

THE COURT: Do you really need the chief mate?

MR. MOLANPHY: At the time he testified, your Honor, he didn't have his deck log with him, he didn't have his stowage plan, so he testified as to generalities, and it was he alone who thought he knew where he could locate the log and he went back to Mexico and found it.

THE COURT: How long do you think it will take you? An afternoon or a morning?

MR. MOLANPHY: I would say so.

THE COURT: What is your pleasure? Then we will hear from Mr. Meeker and Mr. Camera.

MR. MOLANPHY: As recently as last week I tried to find out the earliest days in January that these men

could come from Mexico, and I am awaiting to hear now. I just have not heard.

THE COURT: As matters now stand, I am locked with trials. However, let's not worry about that. Given the vicissitudes of litigation, who knows. I am going to have trouble for a few days beginning January 20th because I have another case, a jury case, but everybody involved, parties, witnesses, there is not a bloody soul who resides in the continental United States. So once I get them all here I am duty bound to keep going. But other than that, I think I can pretty much have any date you care to suggest with firmness.

Even if I got a trial, I can suspend for half a day to take you to get this done.

MR. MOLANPHY: Can I ask your Honor instead of setting a date this afternoon --

THE COURT: Talk to your friends, Messrs. Meeker and Camera, and make sure they are not doing something terribly important, and the day you have in mind, and if they are all set, call my chambers.

MR. MOLANPHY: Thank you, sir.

Do you want to make a motion for the record?

MR.MOLANPHY: Yes, I would like to make a motion to dismiss on the grounds that plaintiff has failed to make

out a prima facie case.

THE COURT: Well, Mr. Meeker, what do you say about that?

MR. MEEKER: I believe I have shown that the cargo delivered to the vessel was in good order and condition and outturned in bad order and condition.

THE COURT: Yes, you have. The only problem is given the nature of the cargo I am wondering about those statements on the bill of lading.

Certainly, there is enough to withstand the motion technically. I agree with that. So I am going to deny it. However, given the nature of cocoa butter, given the obvious temperatures on the east coast of Mexico, Vera Cruz, if this stuff had been packaged, and I think that Captain Beckett pointed out, the chances this stuff was packed by pouring the butter into the polyethylene bags while they sat in each cartoon so as to give them shape, I suppose that if you you truck that stuff over right to the port and proceed with any kind of reasonable dispatch, even if the butter was in a viscus state or even liquid, the stains might not show up yet.

Now, maybe there is nothing wrong with that. But I am wondering if the mate or the captain would have given a clean billing if he would have known all this,

assuming this is what happened, which, of course, we don't know.

MR. MEEKER: I believe if you will read the shipper's testimony --

THE COURT: That is right. I have not read that. I was just theorizing.

MR. MEEKER: The cartons stay in the warehouse quite some time, I forget exactly what the time is. They are kept in the warehouse, which is controlled at 12 to 20 degrees centigrade, which is room temperature.

THE COURT: Well, I will deny the motion of the defendant without prejduice and we wil go forward.

MR. CAMERA: I would like to with Mr. Molanphy in the motion.

THE COURT: The same ruling.

We will hear from our friend, Mr. Molanphy, and presumably we are shooting for some date in January.

MR. MOLANPHY: Yes, your Honor.

THE COURT: I will do my level best, even if I got a trial scheduled. I will just ask everyone's leave to take a morning or afternoon off the particular trial and get this done.

Let me say, a word, and I am quite serious about this, although I won't sound it,perhaps. Given the

habits of our splendid profession in the city of ours, you collectively deserve some sort of an awward for coming in on December 23rd. Doubless you won't receive anything in the nature of an award, you will only be laughed at, but I salute, in any event.

Merry Christmas.

- - -

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL, INC. Plaintiff, - vs - S. S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S. A. doing business as MEXICAN LINES, Defendant.	73 CIVIL 1297
TRANSPORTACION MARITIMA MEXICANA, S. A., Defendant 3rd party Plaintiff, - vs - PITTSTON STEVEDORING CORP., 3rd party defendant.	

16 January, 1975

B e f o r e : Hon. HAROLD R. TYLER,JR., District Judge

- o -

74. 1020

Appearances:

Messrs. HILL RIVKINS CAREY LOESBERG & O'BRIEN
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By: THOMAS F. MOLANPHY, ESQ.

NICHOLAS CAMERA, ESQ.
Attorney for Third Party Defendant
99 John Street, New York, N. Y.

(In Open Court)

THE COURT: Good day, gentlemen.

THE CLERK: ACLI International, Inc., versus S. S. Campeche and Transportacion Maritima Mexicana, S. A.

All sides ready?

MR. MOLANPHY: Ready, sir.

MR. MEEKER: Ready, sir.

MR. CAMERA: Ready, sir.

THE COURT: Now, we have a few witnesses to complete. Now, what is your pleasure?

MR. MOLANPHY: Your Honour, I had intended to start off with one witness who is under subpoena from Connecticut, and I was told yesterday morning that he would be here at noon, so I will start without him.

THE COURT: I'm afraid we will have to.

MR. MOLANPHY: Mr. Espana.

EMILIO ESPANA KRAUSS, called as a

witness in behalf of defendant and third party plaintiff, being first duly sworn by the clerk testified as follows:

DIRECT EXAMINATION

BY MR. MOLANPHY:

Q Mr. Krauss -- Mr. Espana, where do you live, sir?

A In Mexico City.

Q And what is your occupation?

A I am an industrial -- I am a manager of two companies.

Q What -re the names of those companies?

A The first one is Usher who produce chocolates, chewing gums, candies. And the other one is Industriale Soconusco who produce cocoa butter and cocoa powder.

Q Are you the owner of those bueinesses?

A A Fifty per cent of these business.

Q And what is the nature of the business of Industriale Soconusco?

A This is a factory who converts the cocoa beans into cocoa liquor and then into cocoa butter and cocoa powder.

Q Are you a member of any professional societies in the nature of your business?

A Yes. I am a member of the Chamber of Industrial Transformation in Mexico, and I am the president of the

section who, a group all the candy, chocolate and similar manufacturers in Mexico.

Q Incidentally, Mr. Espana, is cocoa butter used in the production of chocolate?

A Yes, absolutely.

Q How long have you been in the business of the production of cocoa butter?

A Since twenty-five years ago.

Q And what jobs have you held in that business?

A This company, Industriale Soconusco, my father was the owner since I was a child, I came into this factory and I know every part of the process of the cocoa beans. And then I was being working in each department at the company and I know all the procedures to produce cocoa butter and cocoa powder.

Q Where is the company, Industrial Soconusco located?

A It's in the City of Mexico.

Q Does that company, Industriale Soconusco, export cocoa butter?

A Yes.

Q Do you export cocoa butter aboard ship to New York?

A Yes.

Q Aboard what steamship companies do you ship this cocoa butter?

A By Mexican Line.

Q From what port in Mexico do you ship?

A Vera Cruz, in the State of Vera Cruz.

Q Who is the consignee of the shipments that you ship?

A Here in New York?

Q Yes.

A K. H. McClure, who lives in Stamford, Connecticut.

THE COURT: K. H. McClure?

THE WITNESS: McClure.

MR. MOLANPHY: McClure, M-c C-l-u-r-e.

Q For how long has your company been shipping to Mr. Mc Clure?

A It would be more than twenty years.

Q Have you also shipped elsewhere?

A Yes. In the past we have shipped cocoa butter to Chile in South America.

Q Would you describe breifly, Mr. Espana, the manufacturing process involved in production of cocoa butter?

A Yes. First you have the beans, you send it through the roaster and then it goes to the creaker and

fanner, it's a machine who put off the shell, and then goes through the mills who produce the cocoa liquor. And then this cocoa liquor is pumped into a tank who stir the cocoa liquor for several hours.

Q Stir?

A Stir. For several hours to put out the moisture on the cocoa liquor. And then using pumps they pump it into the press. This is a filter press. Then you start the press, you push pressure and there are screens on each side and they put off the fat who is the cocoa butter, and then at the finish you obtain slabs round slabs who are the cocoa cake only contain about ten, twelve per cent of cocoa butter.

Then the cocoa butter is passing through the filter who permit that the colour of the cocoa butter is of the same.

Q Is it still in liquid form, or semi-liquid form?

A Yes, it's in liquid, absolutely liquid form. Like very light oil. And then it goes to the -- some storage tank in a liquid form and then we put certain amount, about one hundred kilos in a tank who have a cool jacket. This cool jacket is --

Q Cool jacket?

A Yes, it's cool water, though, and then we start

to stir the cocoa butter inside and then when appears some flakes, in this moment when we start to cool the cocoa butter it's clear oil you can see through.

Then when you stir sometime there appear some flakes who indicate that in a very few moment will be a solid. As soon it happen we stop to stir and we put off all the butter into molds immediately, because if you don't do that you will make foam in the cocoa butter and then if you put this kind of foam in the molds appears too many holes in the slab.

Q Like Swiss cheese?

A Like?

Q Like Swiss cheese?

A Yes. But little, little bubbles of air. In that way each slab weights less and costs more to package because in each package you cannot put on three or four kilos.

Q Would you describe this mold that the --

A There are steel molds in some shape who --

Q Would you show us about how big they are with your hands?

A Yes; like this size (indicating).

Q And how deep?

A And this height and this (indicating). This

have a little trapeze -- pyramidal shape who allow when you cool the cocoa butter and as soon we fill up the molds we leave in in a place, an open place to allow that the cocoa butter start to convert into a solid in very slow way because you put immediately the molds into the cool place, they start to cool the surface and the walls, and this contracts the slab and then in the interior have different temperature who have bigger volume than outside, and this make crack --

Q Crack?

A Crack, excuse me, the slab. That is the reason because it is necessary to make a very slow loss of temperature, and then --

Q When you said the coll room before, Mr. Espana, what is the temperature in the cool room?

A Yes, it's about fifteen centigrade degrees.

Q And what is the temperature in the room where it is placed when it first is put in the molds?

A It's about twenty-one to twenty-eight centigrade degrees.

Q Mr. Espana, I am going to show you this object which I will ask to have marked as an exhibit for identification (handing).

(Defendant's Exhibit I marked for identification)

****

Q Would you examine this, Mr. Espana and tell The Court what it is (handing)?

A Yes. This is a sample of the cocoa butter who was produced -- who was being produced in my factory.

Q Did you bring that with you from Mexico?

A Yes, I bring it.

Q When did you bring it, sir?

A The 14th of this month, two days ago.

MR. MOLANPHY: Your Honour, I would like to offer that in evidence.

MR. MEEKER: No objection.

MR. CAMERA: I have no objection, Your Honour.

**** (Defendant's Exhibit I received in evidence)

THE COURT: May I see that?

THE WITNESS: Yes, sir (handing).

THE COURT: It feels like soap.

THE WITNESS: No, it feels -- could be.

THE COURT: A little bit. Where is the glassine package? We had better put it in that (handing).

Q Mr. Espana, what is the distance , approximately, from your plant in Mexico City to the port of Vera Cruz where you ship from?

A About three hundred ten miles.

Q How is your product transported from your plant

to Vera Cruz?

A When we transport our cocoa butter to Vera Cruz we first make sure that the ship will carry this cocoa butter for export, will accept immediately the cargo. I be in touch in advance with my custom agent who is calling several times a day to the company who handle the vessel and as soon I have the information that the ship will take the cargo in the morning and some day we decide to send the merchandise to the port some hours before the ship will take the cargo, to avoid that this cargo will stay too much time in Vera Cruz.

We instruct to the people who handle the trucks to drive the trucks, that this merchandise have to be at the next day in the port. We usually load the trucks in the afternoon before this cocoa butter will be loaded into the ship.

Q You mean it is to be loaded the very next day?

A Yes. I have some --

Q No, just, if I may go on for a moment. You do transport by truck?

A Yes.

Q About how long does it take a truck to go from Mexico City to Vera Cruz?

A About ten to twelve hours.

Q Are these refrigerated trucks in any way?

A No, we don't need it because all the way from Mexico to Vera Cruz are transported in the night, and these trucks go in a very high level over sea level where it is cool.

Q Incidentally, are you familiar with the road route from Cardenas to the port of Coatzacoalcos?

A Yes, I know it.

Q Would you say that that is a cooler route or a warmer route than the routh that your trucks take?

A No, it's a very warmer route because it is at sea level. It's hot all the day, in the night and the day.

Q Do you make any provision for the storage of your cocoa butter at Vera Cruz before it is loaded aboard the ship?

A We have instructed every time to our custom agent that the trucks will go immediately at one side of the ship this merchandise immediately. We don't allow to put this merchandise in any warehouses in Vera Cruz. That's the reason because we send only a few hours before from Mexico.

Q Do you issue any special instructions to the steamship company concerning the handling and stowage of

your cocoa butter?

A The only one is that this merchandise have to be in the ship immediately this merchandise comes into the port of Vera Cruze, and this merchandise have to be in storage down the level of the water in the --

Q Below the water line?

A Yes.

Q Mr. Espana, you mentioned a few minutes ago that when your cocoa butter was placed in the molds it was then allowed to harden; is that right?

A Yes.

Q And the final hardening took place in this cool room?

A Yes.

Q What happens after it finally becomes hardened in the cool room?

A This merchandise are in the cool room about twelve hourse, and then we pack it into a polyethelene bag and we seal it.

MR. MOLANPHY: At this point, Your Honour, may I have this object marked for identification?

(Defendant's Exhibit J marked for identification)

Q Can you identify this object, Mr. Espana (handing)?

A Yes. This is one of the bags that we use to pack our slabs of cocoa butter, one bag for each slab.

MR. MOLANPHY: I offer that in evidence.

THE WITNESS: And then we seal it.

MR. MOLANPHY: Just a minute. I will offer that in evidence, Your Honour.

MR. MEEKER: No objection.

MR. CAMERA: May I have a quick look at that? I have no objection.

****** (Defendant's Exhibit J received in evidence)

Q Mr. Espana, did you say that these bags are sealed after the slab is put in?

A Yes.

Q And as of the time the slab is put in the polyethelene bag is the slab in a --

A We put --

Q (Continuing)--a hard condition?

A Yes, in very hard condition. Like a stone like the sample I bring you.

Q Is there anything more done then toward the packaging of this cocoa butter for export shipment?

A Yes, we put three slab in one carton, special designed for export.

MR. MOLANPHY: I will ask to have this box

marked for identification.

(Defendant's Exhibit K marked for identification)

Q I will ask you, sir, if you can identify this box for me (handing)?

A Yes. This is the box that we use for export cocoa butter, especially for the port.

THE COURT: It is double cardboard.

MR. MOLANPHY: I will offer that in evidence.

THE WITNESS: This carton is --

MR. MOLANPHY: Just a moment.

MR. MEEKER: I have no objection.

MR. CAMERA: No objection.

(Defendant's Exhibit K received in evidence)

Q Who designed that cargon, sir?

A The people of the company who I own, and myself, too.

Q Did you participate in the design of that cargon?

A Yes, absolutely. Yes.

Q Mr. Espana, did your company use that same carton in 1968?

A We use this type of carton since more than ten years ago.

Q Does your company, your cocoa butter company, also have customers who are local as opposed to export?

A Yes, in the past about twenty years ago.

Q Do you use that same type of carton for local shipments as you do for export shipments?

A No.

Q In what way does the carton used for local shipment differ from the carton that is used for export shipment?

A This carton we have designed especially for export. Have some special features who can resist the rough handling in some places. The carton that we use in Mexico is quite different to these.

Q Would you explain what are the essential differences between the carton that is used for export shipment and the carton that is used locally?

A Yes.

THE WITNESS: May I show you how are the difference, Your Honour?

THE COURT: Yes.

THE WITNESS: You see, in the bottom of this carton is overlapping. You may see?

THE COURT: Right.

THE WITNESS: Overlapping. And this given

special strength here, and then here is gluing, no sewing because in this way it's more resistance this corner, and then we put this inside (indicating) this way.

This union is in a different position from the union here. In that way you give extra resistance in the corners and they have another purpose. You see, there are two --

THE COURT: Double.

THE WITNESS: Double. It's in certain form this is an insulation to protect the cocoa butter. And then there is another more important feature that we use here. If you permit me to have the sample of the cocoa butter --

THE COURT: Yes.

THE WITNESS: The main reason to have a very slow process to solidify this is because this is the lower part of the slab and this is the upper part. This is the shape of the mold. The reason is because if you leave this merchandise loose with the temperature very low there are no internal forces to break the slab.

One other thing who is very important, in this way there are no bubles inside, you may see (handing).

THE COURT: That's right.

THE WITNESS: No air inside. And in this form they support too much the handling and support too much the change of temperature and avoid that this merchandise melt. You see in the upper side you may see some little holes, air bubbles are there, you see. If you leave it six or eight hours loose in the temperature at the temperature room the air are contained in the butter when it goes out. That's the reason because there are no bubbles.

Then in that way the superior surface is plain. Another way if you put the molds immediately to the cool room they make very -- too much internal pressures, and if this pressure start immediately you pull it into the cool room, and then if it is not broken the slab it appears like waves over and that way you cannot put another case upper in a plain form. You see, there are many special features.

BY MR. MOLANPHY:

Q Mr. Espana, on the carton that you use for export purposes is anything put around that carton after the slabs are placed inside?

A Yes. As soon we put in there three slabs --

Q Are the three slabs put in one on top of the other?

A Yes, one on top of the other. We close it, we glue here, we close it and then we put the strap on, up, and then we --

Q Just a moment, Mr. Espana.

MR. MOLANPHY: I will ask that this object be marked for identification.

**** (Defendant's Exhibit L marked for identification)

Q I will ask you, Mr. Espana, can you identify this object (handing)?

A This is one of the straps, steel straps.

Q are they manufactured for you in --

A No, we buy it.

Q You buy it?

A This is the name of the company. This is a steel strap, one goes in this way in the center and another one goes this way in the center to make more strength the package.

Q Does that add strength to the box itself once those are in place?

A Excuse me?

Q Does that strap add strength to the carton once they are put around the carton?

A Yes. Bigger, more strength.

MR. MOLANPHY: I will offer that band in evi-

dence, Your Honour.

MR. MEEKER: No objection.

MR. CAMERA: No objection.

(Defendant's Exhibit L received in evidence)

Q Mr. Espana, do you use the steel band on the cartons that you use locally in Mexico?

A No, we don't use it on the --

Q Just for export?

A Just for export and on the case we use in Mexico. Don't have overlapped down.

Q On the bottom?

A On the bottom and don't have the belt.

Q The interior wall?

A The interior, extra wall.

Q You don't have that on the box that you use locally?

A No.

Q But you do have it on the box that is used for export shipment?

A Yes, it is only for export. Yes.

MR. MOLANPHY: Your Honour, could the witness examine the carton that was produced by the plaintiff as an exhibit with the cocoa butter in it?

THE COURT: Do I have that?

MR. MOLANPHY: I think it was left in the custody of The Court.

THE COURT: Oh, dear! I left it upstairs.

MR. MOLANPHY: Your Honour, may I step outside to see if the other witness has arrived?

THE COURT: Surely.

BY MR. MOLANPHY:

Q Mr. Espana, would you examine the outside of this carton which has been marked as plaintiff's exhibit 16 (handing)?

A Yes.

Q And will you tell The Court essentially what are the external differences between that carton and the carton that you use for export for shipment?

A Yes. The first one is in the corners there are internal space room.

Q Perhaps if I put the two cartons side by side, Mr. Espana (handing).

A Yes. Our slab design is the same who fill all the possible space inside.

Q The design of the slab?

A That way you cannot do this like here.

MR. MOLANPHY: Indicating with pressure on the corners.

THE WITNESS: In one side is filled, the other one is not.

Q Are there other external differences?

A The external difference, the thickness of the wall is, I think this one is very thin.

MR. MOLANPHY: Indicating plaintiff's exhibit 16.

THE WITNESS: Yes. Could I open this case?

THE COURT: Well, I think we will have to ask the lawyers. Would you permit that, gentlemen, without --

MR. MEEKER: If it isn't utterly mutilated I have no objection, Your Honour.

THE COURT: I don't think Mr. Espana intends to mutilate it. Why don't you help him? That can be untied, can't it, without --

MR. MOLANPHY: I believe so, Your Honour.

THE COURT: It can be slipped, I suspect.

THE WITNESS: Here this is stapled, no gluing.

Q Is there any band around this exhibit which is exhibit 16?

A No steel straps around.

MR. MOLANPHY: May the record show that the witness has opened the carton which is plaintiff's exhibit 16.

Q I would ask you now, Mr. Espana, to describe for The Court what are the internal differences between your carton and the carton which is marked plaintiff's exhibit 10.

A This is many difference. You may see. The form of the -- one slab here is not exactly as our cocoa butter because I tell you our cocoa butter cover all the space. This is a new carton, you see there is cocoa butter here (indicating).

MR. MOLANPHY: Indicating on the flat of the carton.

A This is cocoa butter here (indicating). This appers that the cocoa butter is put in in this place in a semi-liquid form, you see. And then they put this. Because another way, you see, this part is form part of the form of this (indicating). And here is broken. Here, do you want to see this? It's broken here. Could be, the reason could be that this cocoa butter as soon they put the cocoa butter in the liquid form you see. Was in the cool room and they allowed the internal forces and broken this without you throwing out.

In this part it appears several holes to in some way to permit air inside, and this form to close is different of ours because we seal the bag. I go so fast?

THE COURT: That's all right, I'm with you.

A And then I think this don't allow that the air inside content in the cocoa butter cannot go out, in this way this cocoa butter if is possible to put a little piece. I think you may see inside many bubles of air.

Q Mr. Espana, is there any interior, separate interior wall, in the carton which is exhibit 16?

A No. And if you permit in this kind of package for export that the slab is broken since go out of the factory without the straps they will make some -- how do you call? floatation?

Q Friction?

A Friction in the movement?

THE COURT: Rubbing together?

THE WITNESS: Yes. Yes. This produce heat, could be allowed that in some parts start to melt.

Q Mr. Espana, can you tell from looking at the outside of the contents whether or not there are the small bubbles of air that you spoke of in exhibit 16?

A Yes, there are traces here of the internalist forces.

THE COURT: I already saw it when you showed it before.

MR. MOLANPHY: Your Honour, could I suggest that the witness be permitted to cut a small portion of this exhibit 16 to examine the interior of the cocoa butter?

THE COURT: I think --

THE WITNESS: If you touch here, if you touch this other side it's not plain.

THE COURT: I think you can unseal that, can't you? It's just tied.

THE WITNESS: Yes, it's just tied.

THE COURT: Why don't you -- if you want him to cut the -- whatever you want him to do you can do it yourself.

MR. MOLANPHY: I was going to suggest that the witness be permitted to cut a portion of the slab itself to examine the interior integrity of the product.

THE COURT: Do you object to that?

MR. MEEKER: I have no objection. I fail to see where it is leading.

THE COURT: Well, I will permit it. Go ahead.

MR. MOLANPHY: May the record show that the witness has cut off a chunk of cocoa butter from plaintiff's exhibit 16 and is examining it?

THE WITNESS: Do you see every place there are

little holes, you see (handing)?

THE COURT: Yes, I see them over here visibly.

THE WITNESS: And if you see the texture of this is quite different from my sample. This happen when you start to -- you see there is broken, too. You may see it more (indicating).

THE COURT: Right.

Q Mr. Espana, you mentioned before the differences between the carton which you use for export shipment and the carton which you use domestically.

A Yes, but --

Q This carton that has been marked exhibit 16, does that compare with the carton that you use locally in Mexico?

A The carton that we use in Mexico is a little more stronger than this. For the Mexican -- for internal consumption.

May I say something more?

THE COURT: I think maybe we had better leave it to the lawyers.

Q Would you just mention what are the differences then between the exhibit 16 and the carton which you use internally in Mexico?

A Our carton in Mexico for the internal use is

more -- how do you say? more bigger the wall?

THE COURT: Bigger.

THE WITNESS: Bigger the wall. And that is the main reason.

Q Mr. Espana, you mentioned the differences between the carton that you use for export shipment and the carton that you use internally.

A Yes.

Q Now, without my repeating each one of these differences, based on your experience in this business do you consider each of those differences as reasonably necessary in a carton that is to be used for export shipment?

A Yes, we have the other carton, especially for export, who can resist the rough handling.

Q And based on your experience, Mr. Espana, do you consider the carton which is before you now, plaintiff's exhibit 16, do you consider that sufficient for proper export packing?

A I think it is not.

Q Why is that, sir? Why is that?

A Why is not?

Q Why is it your opinion that that exhibit, which is exhibit 16, is not sufficient for export ship-

ment?

A There are different things. The first one is very, very thin. It's very easy to broken the corners --

Q Very thin cardboard?

A Yes, very thin cardboard. Don't have any extra resistance in the corners and it's very easy to broken. It's not all the -- all the space, useable space used. This is spaces it's make it possible to broken the carton. The top piece not glued, it's only stuck, it's stuck with -- what you call this (indicating)?

Q Tape?

A Only taped and if you move it it broken immediately and it's very easy to open.

Q Mr. Espana, would you assume that cocoa butter manufactured in Mexico is poured in a semi-liquid state directly into a polyethelene bag, sealed and then placed in a carton; is that, in your opinion, a proper procedure for export packing?

A Not for me, because as I tell in this this way if you are in the near point that the cocoa butter it will convert into a solid you have to continuous stirring to have it like a semi-liquid form. In that way you push on air and you make some form of foam. And then if you put some cases one up, the pressure, the outside tempera-

ture will start to soft the slab and then because they have inside air you pressure the air and they force it to the sides, and it's easier to melt it in this form.

THE COURT: That reminds me, sir. In your opinion was this bag sealed in the way you used the word "sealed"?

THE WITNESS: Don't mean nothing if you seal it in this case.

THE COURT: But I wouldn't consider this to be sealed the way I observed it, and I was asking --

THE WITNESS: No, was not sealed.

THE COURT: I would just assume that they did this and tied it (indicating).

THE WITNESS: Yes.

THE COURT: Well, defense counsel asked you a question assuming a sealing here, and I am wondering. I just want all lawyers to recognize that I am not convinced that was ever sealed.

MR. MOLANPHY: I realize that, Your Honour. I hadn't seen the inside of one of these packages until just now. The testimony, I believe from the shipper in Mexico, in Cardenas, was to the effect that he sealed the bags; is that right, Mr. Meeker?

MR. MEEKER: That is as of 1968. As of 1968.

There might have been a change since then.

MR. MOLANPHY: I will accept that.

THE COURT: Also people use the word "seal" in various ways. Maybe he means by sealing something else than Mr. Espana does.

MR. MEEKER: He used the term "heat seal", Your Honour.

THE WITNESS: In Mexico seal in with heat.

THE COURT: With heat.

THE WITNESS: Yes. Even in Mexico.

THE COURT: The way you normally use poly-ethtlene bags for commercial merchandise handling, yes.

BY MR. MOLANPHY:

Q Is that the way you do it in your plant, Mr. Espana?

A Yes, sir, we seal it.

Q With heat?

A Yes, with heat. The only way to seal it.

THE COURT: Your purpose is to get it as air-tight as possible?

THE WITNESS: Yes.

THE COURT: Anything else?

Q Mr. Espana, what is the melting point of cocoa butter?

A It depends, it depends of the source of the cocoa butter. It's between thirty and thirty-three degrees, centigrade degrees.

THE COURT: Is that Fahrenheit or centigrade?

THE WITNESS: No, centigrade.

THE COURT: Thirty --

THE WITNESS: -- to thirty-three.

THE COURT: Thirty to thirty-three.

THE WITNESS: But in some cases if the cocoa butter is obtained from beans who was cut without wait the complete development of the beans in the plant, the point of melting could be lower. Twenty-seven centigrade degrees.

Q Mr. Espana, are you familiar with the government's storage facilities at the pier at Coatzacoalcos?

A Yes, I know it. I was in there several times.

Q In your opinion, sir, and based on your experience, are these adequate storage facilities for the storage of cocoa butter for up to two days?

A No. I will never accept to put our cocoa butter in this storage because it melted. It's very hot. The ceiling is from sheets of metal and it absorbs too much heat. I was in there buying cocoa beans receiving cocoa beans in this place and I love to buy beans

in there because with the high heat when I buy these beans it have a very low moisture content.

MR. MOLANPHY: I have no further questions at this time, Your Honour.

CROSS EXAMINATION

BY MR. MEEKER:

Q Mr. Espana, you said that you were familiar with the route from Cardenas to Coatzacoalcos?

A Yes.

Q Do you know how long that takes by truck?

A I was making this by driving. I think it is about three, four hours driving a car. Could be six in a truck.

Q Could it be two hours by truck?

A I drive very slow, I take four hours.

Q In other words, it is about at least three times as short as it is from Mexico City to Vera Cruz?

A Yes.

Q This defendant's exhibit L you say this adds support to the box; is that right (handing)?

A Yes.

Q It doesn't seem to be able to support much.

A No, because you tie it.

Q Yes, but if there were pressure on top of the box that certainly wouldn't add much support to it, would

it?

A Yes.

Q I'd like to see how that works. But, if you say so.

Now, you say that that box, your box, the one that is behind you, Me. Espana --

A The box?

Q Yes. How many pounds do you put in that box?

A We put here about thirty-three kilos. More than here.

Q Which is, I believe, about sixty-five, seventy pounds?

A I don't know exactly the conversion.

MR. MEEKER: No further questions.

MR. CAMERA: I have no questions, Your Honour.

THE COURT: Thank you very much, Mr. Espana, you may be excused, sir.

THE WITNESS: Thank you very much.

(Witness excused)

THE COURT: Well, we will adjourn for lunch and resume at 2:00 o'clock. Now, you have your witness --

MR. MOLANPHY: Your Honour, could I make one suggestion? I believe Mr. Mc Clure is in the courtroom now, and I indicated to Mr. Mc Clure that I thought he

could be on and off in about fifteen minutes. Could we possibly take him now?

THE COURT: All right, but you know court personnel do have to eat at some time.

MR. MOLANPHY: I will try to cut it down to even five minutes, Your Honour.

THE COURT: Fine. Give it a try and we will see how we do.

K E N N E T H M C C L U R E , called as a witness by defendant and third party plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOLANPHY:

Q Are you also a resident of Stamford, Connecticut, Mr. Mc Clure?

A I am a resident of New Canaan, Connecticut, which is close by.

Q Are you here pursuant to a subpoena?

A Yes, I am.

Q What is your occupation?

A We are importers principally of cocoa products, coconuts and nut meats.

Q What is the name of your company?

A K. H. Mc Clure & Company.

Q What is your position?

A I am board chairman.

Q How long have you been board chairman?

A For about five years.

Q For how long have you been with K. H. Mc Clure?

A I founded the company twenty years ago.

Q Among the products which you import, sir, do you import cocoa butter from Mexico?

A Yes, we have for a number of years.

Q Have at least some of those shipments come aboard Mexican Line vessels?

A Yes, many.

Q Where are they discharged, sir?

A Generally in New York.

Q Could you advise The Court of the name of the shipper of the cocoa butter which you import from Mexico?

A The only cocoa butter I have ever imported was from Industrial Soconusco. I used to trade with Mr. Espana's father, now I trade with Emilio.

Q How long has your company been importing cocoa butter from Industrial Soconusco?

A My company, since its inception, and I imported as a purchasing agent for a large confectionery company from Chicago for some five years before that.

Q In the years that you have been importing -- in the years that K. H. Mc Clure & Company has been importing cocoa butter from Industrial Soconusco in Mexico what has been your experience with respect to damage to the product on outturn here in New York?

A We have had very excellent experience. I have never had a loss that I can recall, and I checked back through the records. We had a gap of time in which we did not import due to the cocoa market, but in 1973 and '74 we did have substantial imports and we had absolutely no claims. Every shipment arrived safe and in sound condition.

Q Did that include the carton in which the shipQ ment arrived as well as the product itself?

A Yes.

Q Did you, sir, have occasion to write to Mr. Espana and so advise him of the overall condition on outturn of your product?

A Well, over many years I have seen Mr. Espana off and on, and I have mentioned that from all the countries that we import perhaps his package is one of the best.

Q Do you recall having so written to him at any time?

A I don't recall but perhaps I did.

Q I will show you a document and I will ask to have this marked for identification.

******* (Defendant's exhibit M marked for identification)

Q I will ask you to read that, sir, and ask you if that refreshes your recollection (handing).

THE COURT: Wait a minute now, this is defendant's exhibit M?

THE CLERK: Yes, Your Honour.

THE COURT: All right.

A This was dated October 12th, 1973, addressed to Senor Emilio Espana Krauss --

Q Read it to yourself, sir, and I will ask you if that refreshes your recollection as to whether you ever wrote to Mr. Espana advising him of the excellent condition in which his product outturned.

A Yes, I do recall this quite clearly now.

MR. MOLANPHY: I will offer this document in evidence, Your Honour.

MR. CAMER: No objection.

MR. MEEKER: No objection.

****** (Defendant's exhibit M received in evidence)

MR. MOLANPHY. I have no further questions of

Mr. Mc Clure, Your Honour.

THE COURT: Wait a minute, Mr. Mc Clure, they may want to crossexamine you briefly.

MR. MEEKER: I have no questions.

MR. CAMERA: No questions, Your Honour.

THE COURT: I was wrong, sir. Thank you. You are excused.

(Witness excused)

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THE COURT: Now, Mr. Molanphy and Mr. Meeker and Mr. Camera, as I understood it by phone third hand or fourth hand, I believe there are two more witnesses?

MR. MOLANPHY: I have one, your Honor.

THE COURT: You have one?

MR. MEEKER: I have two rebuttal witnesses, your Honor.

THE COURT: Two.

MR. MEEKER: They stated they will be here at 3. I doubt if they will take --

THE COURT: How long is your witness going to be?

MR. MOLANPHY: He is the chief officer of the vessel, your Honor. The man who was deposed, but unfortunately at the time of his deposition he didn't have his log book, he didn'thave his stowage plan.

THE COURT: That's right. I remember that. Well, we will resume at the unlikely hour of ten minutes after two..

(Luncheon recess.)

cmbr 2

AFTERNOON SESSION

2:10 p.m.

(In open court.)

THE COURT: Mr. Molanphy, what is your pleasure? You have got one more witness; is that right?

MR. MOLANPHY: Yes, your Honor.

THE COURT: All right.

R U B I N V I L L E A S D O M I N G U E Z, called as a witness in behalf of third-party plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOLANPHY:

Q Where do you live, sir?

A I live in Vera Cruz.

Q In Mexico?

A In Vera Cruz, Mexico, yes.

Q What is your occupation, sir?

A Right now?

Q Yes.

A My occupational is teaching in nautical merchant school.

Q Full-time teacher?

A Yes, full-time teacher.

Q In the nautical merchant school?

A That's right.

Q Where is that school located, sir?

A In Vera Cruz.

Q Do you hold any licenses from the Mexican Merchant Marine?

A Yes.

Q What license do you hold, sir?

A I am a captain. We call it high captain.

Q High captain?

A That's right.

Q Is that all tonnage, all ships, all oceans?

A Yes.

Q For how long have you been a licensed captain licensed by the Mexican Government?

A Well, there is two titles; captain and high captain.

Q All right.

How long have you been a high captain?

A Five years, a little bit more.

Q For how long before that were you a captain?

A More than five years.

Q When did you first start going to sea?

A Around 1952.

Q Did you continue sailing following 1952 up until the time you became a full-time teacher?

A Yes, almost, because of vacations, you know.

Q In July of 1968 by whom were you employed?

A Mexican company, it's name is Transportacion Maritima Mexicana, S.A.

Q Is that also known as Mexican Line?

A Yes.

Q Were you employed above a ship in July of 1968?

A Yes.

Q What was the name of that vessel?

A Campeche. I was employed like chief mate on the Mexican motor vessel Campeche.

THE COURT: You were the chief mate?

THE WITNESS: Yes, I was chief mate.

Q I show you this book, Captain, which I will ask to have marked for identification.

xx (Defendants' Exhibit N was marked for identification.)

Q I will ask you, sir, to tell me what that is (handing).

A Yes, this is the, we call -- cuaderno de bitacoro, something like log book.

Q Captain, is that the deck log of the Campeche?

cmbr 5 Dominguez-direct

A Yes, it is.

Q What does does it cover? What is the beginning date and the ending date?

A This covers from July the 1st to July the 31st in 1968.

Q Is that a record which is required to be kept on the Campeche in the regular course of the ship's business?

A Yes.

MR. MOLANPHY: I will offer that in evidence, your Honor.

MR. MEEKER: I have an objection. I don't believe there is a translation to that and I don't really know what it says.

MR. MOLANPHY: Your Honor, I had undertaken to try and get it translated, but I was on another trial last week and I just was physicaly unable to do it.

THE COURT: Well, if --

MR. MOLANPHY: It is in Spanish.

THE COURT: I am sure it is. We will receive it subject,however to some time or another if either side wants to have a translation made, I think they are entitled to get that.

MR. MOLANPHY: Yes, your Honor.

THE COURT: But I will receive it subject to that

condition. I am not sure but what a lot of the entries can be even determined by those of us who don't speak, or don't read written Spanish.

But, anyhow, let's go ahead on that basis.

xx (Defendants' Exhibit N was received in evidence.)

BY MR. MOLANPHY:

Q Does that include Voyage 63 northbound of the Campeche?

A Yes.

Q When did you join the Campeche, Captain?

A I joined the Campeche at Vera Cruz in July the 8th, 1958.

Q And you joined as chief officer?

A As chief officer.

Q At the time you joined the vessel on July the 8th was the vessel loading or discharging cargo in Vera Cruz?

A Was discharging.

Q Would that be cargo that had been carried on Voyage 62 southbound?

A 63 southbound.

Q 63 southbound?

A Yes, sir.

Q Were you with the vessel as chief officer for the

entire voyage of 63 northbound?

A I was chief mate.

Q Captain, I will show you this one page document which I will ask to have marked for identification.

xx (Third-Party Plaintiff's Exhibit O was marked for identification.)

Q I will ask you, Captain, if you can tell me what this document is (handing).

A Well, this is the original of the cargo plan of the Campeche.

Q The original of the cargo plan?

A Yes. Corresponding to Voyage No. 63 northbound.

Q And finally, Captain, I will show you this third document which I will ask to have marked for identification.

(Defendant and third-party Plaintiff Exhibiti P was marked for identification.)

Q I will ask you, sir, if you can identify that document (handing).

A Yes. This is a copy of the Campeche motor vessel and Jalapa motor vessel.

Q The plan?

A Yes, the plan.

Q Does that represent the Campeche as the Campeche appeared in July of 1968?

A Yes.

MR. MOLANPHY: Your Honor, I will offer both those documents in evidence, the cargo stowage plan and the capacity plan.

THE COURT: Respectively Exhibits O and P marked for identification.

MR. MOLANPHY: Yes,your HOnor.

MR. MEEKER: No objection to Exhibits O and P.

MR. CAMERA: NO objection to Exhibit O and P, your Honor.

xx (Defendant and Third-Party Plaintiff's Exhibits O and P were received in evidence.)

BY MR. MOLANPHY:

Q Referring to the stowage plan, Captain, which is Defendants' Exhibit O in evidence, could you tell me whether a shipment of cocoa butter was carried aboard the Campeche on Voyage 63 northbound?

2 A What is the question? Repeat it, please.

Q Was there a shipment of cocoa butter carried aboard the Campeche on Voyage 63?

A The shipment of cocoa butter carried on board the ship?

Q Yes, sir.

A Well, there is a lot in lower hold after end No. 4,

cmbr 9 Dominguez-direct

and there is another part in No. 4 tween deck, forward end.

THE COURT: Excuse me a minute. You said in lower No. 1?

THE WITNESS: Lower hold No. 1 after end. And No. tweendeck forward end.

THE COURT: And No. 4 tween deck?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. MOLANPHY:

Q Captain, how large was the lot that was carried in the No. 1 lower hold after end?

A 3668 cartons.

Q And how large was the lot --

THE COURT: 3600 -- I am sorry, 36 what?

THE WITNESS: 3668 cartons?

THE COURT: All right. That is in No. 1?

THE WITNESS: No. 1 lower hold.

THE COURT All right.

THE WITNESS: And 2732 cartons in No. 4 between deck.

Q At what port was that cargo loaded?

A That cargo was loaded at Coatzacoalcos.

Q Did the vessel call at Coatzacoalcos or

some time after it left Vera Cruz?

A Yes. We sailed from Vera Cruz and then arrived to Coatzacoalcos.

Q Before leaving Vera Cruz did the vessel load any cargo in the No. 1 lower hold?

A Yes. Before arriving in Vera Cruz, before arriving in Coatzacoalcos.

Q What was the nature and the amount of the cargo that was loaded in the No. 1 lower hold before leaving Vera Cruz?

A Before leaving Vera Cruz we load at Vera Cruz drums, horsehairs and cases and bags of dried flies.

THE COURT: What was in the drums?

THE WITNESS: Essential lemon oil and catalizer. There were 111 drums and essential lemon oill and only 11 drums in catalizer.

THE COURT: Then you say there were some cases?

THE WITNESS: 22 cases of horsehair, 188 bags of dried flies.

THE COURT: 22 cases of what? I'm not --

MR. MOLANPHY: Dried flies.

THE WITNESS: Horsehairs.

THE COURT: No, I am sorry. Horsehair?

cmbr 11 Dominguez-direct

THE WITNESS: Horsehair.

THE COURT: Oh, I am sorry. I didn't understand you.

Q Where in the lower hold was that cargo stowed?

A Well, that cargo was from the half to the back.

Q The after half of the hatch?

A Yes.

Q Was there any cargo stowed in Vera Cruz in the forward portion of the lower hold?

A Yes, there were. We load 40 barrels of tequila.

Q Was any cargo stowed in the No. 4 tween deck at Vera Cruz?

A No, sir.

Q Referring to your leg book, Captain --

THE COURT: Excuse me. Again, I am confused. You say the tequila was also lowered in lower No. 1?

THE WITNESS: Yes, sir. In the forward end.

MR. MOLANPHY: In the forward end.

THE COURT: In the forward end?

THE WITNESS: That's right.

THE COURT: I missed it.

Q Captain, would you refer to your log book and tell us when the Campeche left Vera Cruz?

A Yes.

Q Following the loading of this cargo.

A The Campeche sailed from Vera Cruz July the 12th.

Q What was the next port?

A The next port was Coatzacoalcos.

Q When did the vessel arrive at Coatzacoalcos?

A The vessel arrived at Coatzacoalcos July the 13th.

Q Can you tell from your log book, Captain, when the cocoa butter was loaded aboard the vessel?

A Yes.

Q When was that, sir?

A Cocoa butter was loaded July the 13th.

Q Is that in both the lower No. 1 hold and the No. 4 tween deck?

A Yes. We started loading 1215 in No. 1 lower hold and we started loading in No. 4 tween deck 1435.

Q Captain, can you tell from the capacity plan the approximate height of the No. 1 lower hold of the Campeche?

A Yes. Well, I know the height on the No. 1 lower hold is around 17 feet.

Q 17 feet?

A Yes.

Q How about the No. 4 tween deck? Approximately?

A Approximately ten feet.

Q Captain, referring to the cocoa butter that was stowed in the after end of No. 1 lower hold, was that stowed on top of the drums and the bags of dried flies and horsehair that you mentioned before?

A Yes. Was on top of the drums, and the horsehair cases, and then the dried fly.

Q Was any preparation done on top of that cargo before the cocoa butter was put in?

A Yes.

Q What preparation?

A We put dunnage and then we put a canvas and then we put more dunnage and then we go up with the cargo, cocoa butter.

Q How high did you go up with the cartons in the No. 1 lower hold? All the way to the top?

A Until a little bit less than the ceiling of the hold.

Q From the information that is supplied to you by your capacity plan and the stowage plan, captain, could you tell us approximately how many cartons high were stowed in the No. 1 lower hold?

A Yes. Yes.

Q Approximately how many were they?

A Between 18 and 22, something like that.

Q Was there any dunnage interspaced,or put into this stow in the No. 1 lower hold?

A Yes, sir.

Q At what levels was dunnage used?

A Around the 7th or the 8th tier.

Q Captain, I would like you to have a look at Plaintiff's Exhibit 16 which is a carton of cocoa butter, and I ask you to translate for the Court some instructions that appear on the flap.

First of all, would you read those words into the record in Spanish.

A "Estiba maxima 30 cajas."

Q What does that translate into in English?

A Well, that means maximum stowage 30 boxes.

Q At the time this cargo was loaded in Coatzacoalcos, Captain, was there any external evidence of damage to this cargo?

A No, I didn't see.

Q And you were the chief officer at that time, were you not?

A I was the chief officer at that time.

Q In your opinion, Captain, and based on your experience, was that cargo of cocoa butter properly stowed

in the Port of Coatzacoalcos?

A Yes, it is properly stowage at Coatzacoalcos on the ship.

Q Did there come a time when the Campeche left Coatzacoalcos? Do you understand my question?

A No. Repeat it.

Q Did there come a time when the Campeche left Coatzacoalcos?

A In what?

Q Sailed from Coatzacoalcos?

A Well, we sailed from Coatzacoalcos July 15th -- wait a minute, please. July 14th.

Q Where did you sail to?

A We sailed from Coatzacoalcos to Progresso.

THE COURT: I am sorry. What was that?

THE WITNESS: Progresso.

Q When, sir, did you arrive at Progresso?

A We arrive at Progresso on July the 15th.

Q Did you load more cargo in Progresso?

A Yes, of course.

Q Did there come a time when you left Progresso?

A We left Progresso on July the 17th.

Q What was your next port?

A Philadelphia.

cmbr 16 Dominguez-direct

Q Now when did you arrive at Philadelphia?

A We arrive at Philadelphia July the 21st at anchor.

Q Did the ship discharge cargo at Philadelphia?

A Yes.

Q Incidentally, Captain, was any of this cocoa butter either in the No. 1 lower hold or the No. 4 tween deck bound for any place other than New York?

A Yes. All the cargo, the cocoa butter was for New York.

Q When did you leave Philadelphia?

A We leave Philadelphia on July 22nd.

Q Were you found for New York?

A Yes.

Q When did you arrive at New York?

A We arrive at New York on July 27[illegible].

Q At what time?

A At what time?

Q Yes.

A 1204 complete.

Q Is that 1204 p.m. in the afternoon?

A 1204.

Q At noontime?

A At noontime.

Q And at what pier did you dock?

A We dock at Pier No. 20 on Staten Island.

Q Is it at Pier 20 on Staten Island that the cocoa butter was discharged?

A Right.

Q Captain, was there any damage noted with respect to any of the cocoa butter cartons in the No. 4 tween deck?

A No, there were no damage in No. 4 tween deck.

Q Was there damage noted to the cargo of cocoa butter in the No. 1 lower hold?

A Well, in the No. 1 lower hold --

Q Could you just answer my question, was there damage noted to that cargo?

A Well, the damage what?

Q Was there damage noted to that cargo in the No. 1 lower hold?

A At what time?

Q No, was there? In other words, was there damage to the cocoa butter?

A Yes, was some damage in the cocoa butter in No. 1 lower hold.

Q Can you tell from your log, Captain, when the discharge from the cocoa butter from the No. 1 lower hold began?

A Begin? The cocoa butter started discharging on July 24th.

Q Captain, didn't you tell us that you arrived in New York on -- what date?

A On July 23rd.

Q 23rd?

A Yes. Noontime.

Q And the discharge of the cargo of cocoa butter began on July 24th at what time?

A There were another few cargo on No. 1 hatch.

Q In the morning then of July 24th?

A Yes.

Q Captain, to go back for just a moment, had the cargo aboard the Campeche been ventilated during Voyage 63 northbound?

A Yes.

Q Is that noted in your log book?

A It is in the log book.

Q Could you tell us when that ventilation is recorded?

A Yes. On July 18th from 8 o'clock in the morning to 6:15 in the afternoon. And July 19th from 9 o'clock in the morning until 7:30 afternoon.

Q Captain, you said that damage was noted to the cocoa butter in No. 1 lower hold on discharge; is that right?

A On discharge.

Q Could you tell me where generally in the stow that damage was observed? Was it near the top of the stow, the middle, or down at the bottom, or where?

A Well, we observe the damage at finishing of discharging of the cocoa butter. That means we didn't observe any damage on top of the cocoa butter, only damage from rain because during a few minutes was raining we close the hatches, there was some wet cartons on top.

Q How about the other damage that you noted?

A The other damage we noted was when the cocoa butter discharging was finished.

Q Do you have an entry in the vessel's deck log concerning the damage that was noted to the cargo in the No. 1 lower --

A In the log book, yes.

Q Will you read to us that entry? First of all, by whom was the entry made?

A Excuse me?

Q Could you tell us who wrote the entry in the log book concerning the damage?

A Yes.

Q Who wrote it?

A Who wrote it?

Q Yes.

A Me.

Q On what day does this entry appear?

A In July 26th.

Q At what time?

A 10 o'clock.

Q 10 o'clock in the morning?

A Yes.

Q Would you read the entry in English?

A In English?

Q Yes, please.

A "At final settlement of lot of cartons of cocoa butter from No. 1 -- from hold No. 1 between (bill of lading 20, it is observed that due to hit many of them spill out the contents and liquid damaging almost in its totality the dry flies stowage underneath, between (bill of lading 41 Vera Cruz, New York. Even to protected was put a canvas between both cargo, canvas was passed through but the butter, liquid butter stayed completely wet with it. And stained part of bill of lading 8 Vera Cruz, New York, between (horsehair, and the drums of essential lemon oil and catalizer.

"The stowage on the floor of the hold be observed to spillage, or spilling was as copious than a part on the

cmbr 21 Dominquez-direct

top of the drums and too much on the plan, or floor."

Q On the floor?

A On the floor. And difficult greatly the handling of such drums in the region of the damage.

Q And this is a report in the log book based on your observations?

A Yes.

Q And the cocoa butter that was down around the drums on the floor at the time you saw it, was that hard or was it soft?

A It was hard.

Q Was all this cargo eventually discharged in New York?

A All this cargo was discharged in New York.

Q Who was it discharged by, the stevedore?

A Longshoreman.

MR. MOLANPHY: I have no further questions, your Honor.

THE COURT: Captain Dominquez, I would --

THE WITNESS: Villeas Dominquez.

THE COURT: I beg your pardon. Captain Villeas Dominquez, as I understand it in No. 1 lower hold the lower part of the tiering was where the damage really was observed. Or, to put it differently, the cartons of

cocoa butter up at the top of the stow weren't particularly damaged; is that correct?

THE WITNESS: Well, the damage was in the lower part.

THE COURT: The lower part?

THE WITNESS: Right.

THE COURT: Except for this minor rain?

THE WITNESS: Yes.

THE COURT: Where did that rain damage come, here in New York, at Staten Island?

THE WITNESS: Here in New York.

THE COURT: After you took off the hatch cover?

THE WITNESS: Well, we opened the hatches and we were afraid to --

THE COURT: What are these, hydraulic hatches? Are these hydraulic hatch covers?

THE WITNESS: Mc Gregor.

THE COURT: So after you opened the hatch and while the longshoremen were working there was some rain?

THE WITNESS: Yes.

THE COURT But I take it that didn't do anything to create any seepage of cocoa butter in a liquid form out of those cartons which were hit by rain.

crbr 23 Dominguez-cross

THE WITNESS: Will you please --

THE COURT: I will start again. Taking those cartons on top of the stow which you noticed were dampened by rain water, I take it none of those cartons were in any other way damaged except by the water on top?

THE WITNESS: Yes.

THE COURT: Is that correct?

THE WITNESS: That is correct.

THE COURT: All right. Thank you.

Mr. Meeker.

MR. MEEKER: Yes, I have a few questions, your Honor.

CROSS EXAMINATION

BY MR. MEEKER:

Q Captain, had you ever carried cocoa butter before coming aboard the Campeche that you were aware of in 1968?

A Before?

Q Yes.

A No. I don't think.

Q Had you received any instructions from Mexican Line about how to carry this cargo?

A A special instruction?

Q Right.

A No.

Q You stated there were drums under stowing in this cargo as well as various ases of horse hides and dry flies. How high in the hold from the bottom was this other cargo?

A We put the drums and on top of the drums we put the horsehair and the dry flies.

Q How high from the top of the drums, or, how high was the tier between the drums and the cocoa butter?

A We put the tier, one tier of the drums and -- around four or five feet.

Q So in other words, you had a tier of drums which is roughly 3-1/2 feet high, and you had another tier of material which was --

A Another tier?

Q (Continuing) 4 feet high, let's say. So you had basically 8-1/2 or 9 feet of cargo stowed beneath the cocoa butter; is that right?

MR. MOLANPHY: Your Honor, I don't think that's quite what the witness testified to.

THE COURT: Well, in any event I couldn't hear the question and I doubt that Captain Villeas Dominguez could, either.

Could you rephrase it?

MR. MEEKER: Yes, your Honor.

Q Captain, between the top of the drums in the No. 1

lower hold and where the cocoa butter started, how much cargo was stowed between the top of the drugs and the cocoa butter?

A Well, between the drums and the cocoa butter we loaded 188 bags of dried flies and 22 cases of horsehair.

Q Well, in height.

A In height?

Q How high would it be? One foot, three feet, five feet?

A Around five feet.

Q So in other words, are you saying now -- all right. Let me ask you this:

How high were those drums?

A Regular size drums.

Q Say 3-1/2 feet?

A It's 2 liters, 200 liters drum.

Q Roughly like a 55 gallon drum?

A Yes.

Q So that --

A It's around (indicating).

Q You would say around 3-1/2 feet. Plus you had another five feet on top of that?

A Yes.

Q So that is, I believe, about 8-1/2 feet of cargo under stowing the cocoa butter; is that right?

A Yes.

Q Now, you testified that the height of the hold was 17 feet?

A Yes.

Q That leaves about 8-1/2 feet of space between the top of the other cargo loaded at Vera Cruz and the top, the ceiling of the cargo hold; is that right?

A Yes. 8-1/2 is half of 17.

Q You also testified prior to this that there was a 2-foot crawl space at the top of the hatch. In other words, for the stevedores to get in and handle the cargo they was a 2 foot space left at the top of the cocoa butter between the ceiling of the lowerhold and the top of the cocoa butter?

A Yes.

Q So that leaves us about, let's say 7 feet, that the cocoa butter could have been stowed?

A Yes.

Q Is that right?

A Yes.

Q Now, could you tell us how this cocoa butter was stowed? Was it stowed like that (indicating)? Orwas it stowed like that (indicating)?

A The other way.

Q It was stowed like that (indicating). I believe that's about 7 inches the way it stands like that. So you would say in that 8-1/2 feet of space to put this cocoa butter in you would come up with -- I don't think you could have put more than 12 cartons.

MR. MOLANPHY: Your Honor, I object. Who is doing the testifying here?

THE COURT: Well, I will allow it. He is making the computation.

Did you understand that, Captain? He is asking you to assume that the cartons such as the one out there are about 7 inches high as theywere stowed. And assuming 8-1/2 feet he would compute that you could stack in the tier about 12 of those cartons highin the stow.

Would you agree to that?

THE WITNESS: 12?

THE COURT: That's right.

THE WITNESS: Could be. I think maybe could be more.

THE COURT: Well, he is also, I think, askingyou to assume two feet for crawl space.

MR. MEEKER: That's right. So we are talking of 7 feet.

THE WITNESS: In other words, he is trying to tell

me that --

THE COURT: Instead of --

THE WITNESS: Instead of 7 inches high and between 18 and 22 cartons will be something --

THE COURT: Right.

THE WITNESS: Right. I understand.

BY MR. MEEKER:

Q So what is it more like, is it more like 12 cartons high or 18 to 22 cartons high?

A I told you before, I think it was 18 to 22 cartons high.

Q Could you tell me how you could do that knowing the size of the box? Knowing the size of the box in the space that you had in the hold how can you fit 22 cartons in?

A Well, the only thing I have to testify through here this cargo plan.

Q Well, does the cargo plan indicate how many cartons high it was?

A Well, the cargo plan indicates a little bit less than the half of top of this (handing) on the cargo, see?

THE COURT: Well now, I --

THE WITNESS: The dry fly is a cargo too light. But for this here we need some space clear down here (indicating).

THE COURT: Do you want to show that to Mr. Meeker?

Q Captain, I don't see on here that there is any indication how many tiers you had.

A No.

Q So is it --

A And there is no -- in any cargo plan, general cargo you will never find how many tiers of cargo it is.

Q I still don't understand, Captain, how you can have 22 cartons in that space, in a space of even 8 feet.

A How it weigh you find only 12 cartons.

Q Well, Captain, you testified that the height of the hold is 17 feet?

A Yes.

Q You have also testified that there was a tier of --

A Drums.

Q (Continuing) -- of drums say 3-1/2 feet high.

A Yes.

Q 7 from 3-1/2 is -- we have got 13-1/2 feet left. You have testified that there was a 5 foot space for this other cargo, the horse hidesand the dry flies loaded at Vera Cruz about five feet high?

A Yes.

Q That leaves 7-1/2 feet?

A Yes.

Q You testified that there was a 2-foot crawl space at the top of the hatch. A 2-foot crawl space for the longshoremen to work the cargo.

A Yes.

Q That leave 5-1/2 feet in which to put this cocoa butter.

Now, in inches that works out to 66 inches.

A 66, yes.

Q Now, those cartons, they are about 7 inches?

A Looks like.

Q If you put 7 into 66 you come up with less than 10 cartons in a tier.

A Well, maybe I'm wrong with the high and the low cargo.

Q Is it still your testimony there were 22 cartons in the tier?

A I told between.

Q Between 18 and 22?

A Yes.

Q Captain,you are a magician.

MR. MOLANPHY: I object to that, your Honor.

THE COURT: Well, that will be discarded.

Q Captain, the drums of essential lemon oil that were loaded at Vera Cruz, do you know from where they were loaded? Do you know from where on the pier they were loaded?

A From where?

Q Yes.

A On the pier?

Q Yes.

A From which place it comes to the pier?

Q Do you know where they were stowed prior to loading aboard the Campeche?

A Well, we load in No. 1 lower hold.

Q I know, but do you know where on the pier they were before you loaded them?

A No.

Q Did you inspect the drums yourself?

A Before loading --

Q Yes.

A Loading, or --

Q Before loading.

A No.

Q Is it possible the drums were sitting in the sunlight?

MR. MOLANPHY: Objection, your Honor, to what is

possible.

A It is possible when?

THE COURT: I agree. Anything is possible. I think, however, you may have something else in mind, so reframe it if youwould like.

Q Do you know if the drums were sitting in warehouses prior to your loading them?

A I don't know where the drums were between arriving on the Campeche.

Q Captain, you testified in this case on July 23rd of this year?

A July what?

Q July 23rd of this year; is that right?

A Yes.

Q At that time when I asked you whether you had any rough weather you said you didn't think so, but of course you didn't have the log at that point. Is it still your testimony that there was no particularly rough weather on that voyage?

A Right now?

Q Yes. You can check right now.

A No rough weather.

Q You also testified that nobody took temperatures in the holds during that voyage; is that correct?

A That is correct.

Q You also testified that the average temperature on the voyage was about 75 degrees Fahrenheit, or, I think you said maybe 27, 28, 29 degrees centigrade; is that still about right?

A Yes.

Q Now, Captain, I think you also testified that had you stowed this cargo in the No. 3 lower hold rather than in the No. 1 lower hold the damage would not have occurred; do you remember saying that?

A Yes. Yes, I told you.

Q Do you still believe that?

A Yes, but at the time I testify that I told you too that was only according with the shape of the hold, only. And you asked me to, now what -- what caused that, and I toldyou that I didn't stow the cargo in No. 3, and you asked me to then why I didn't stow the cargo and I told you that normally we have like chief mate too many reasons to stow the cargo in any hold we need. I recall in looking the cargo plan now I can tell you what was the big reason to stow the cargo in No. 1 lower hold and no No. 3, because the big load of the cargo taken at Coatzacoalcos was coffee, was mainly coffee and we used the room in No. 3 to load coffee.

Q But still if you had stowed it in No. 3 you wouldn't have had the damage?

A According with the shape of the hold I think no.

MR. MEEKER: I have no further questions.

THE COURT: Mr. Camera?

MR. CAMERA: I have no questions, your Honor.

THE COURT: Is there any redirect examination, Mr. Molanphy?

MR. MOLANPHY: No, sir.

THE COURT: Thank you, Captain. You may be excused, sir.

(Witness excused.)

THE COURT: Does the defendant Mexican Lines rest?

MR.MOLANPHY: Your HOnor, I would like at this time to offer in evidence an exhibit that was marked for identification on December 23rd. I am trying to figure out which one it was. It was the surveyor's report, plaintiff's surveyor's report of the examination of the first shipment in May of 1968, the May 1968 shipment. I believe it was marked for identification at that time.

THE COURT: Well, I have no doubt that you are right, but I am powerless to help you because I wasn't there. There is a deposition --

cmbr 25

MR. MOLANPHY: No, your Honor, it's at the beginning of the trial.

THE COURT: Oh, I misunderstood you. I beg your pardon.

MR. MOLANPHY: On December 23rd.

THE COURT: Well, Defendant's Exhibit A is the Lloyds' Survey Report re Voyage No. 10, that is what you want. Then there are two addenda.

MR. MOLANPHY: Bill of lading No. 10, I believe, your Honor, is it?

THE COURT: According to my notes Defendant's Exhibit A marked for identification is Lloyds' Survey Report regarding Voyage No. 10 in May.

MR. MOLANPHY: I think it is Voyage 61, your Honor.

THE COURT: Well, I can't argue with you again. All I am doing is reading my notes to you. Maybe I'm a lousy note taker, but I am just trying to help you.

MR. MOLANPHY: I am sorry. But that would be the document to which I refer.

THE COURT: Well, why don't you look at something -- you see, you marked a whole series, you then had Exhibit D which is the Lloyds' Report for the July voyage.

MR. MOLANPHY: Yes, sir.

cmbr 36

THE COURT: And Exhibit E is the first addendum. Don't you have those materials?

MR. MOLANPHY: They are Mr. Meeker's documents, your Honor.

THE COURT: Well, I don't believe the Court has them because as you properly point out they were never offered and never received.

MR. MOLANPHY: Could we do this, could Mr. Meeker transmit the document to your Honor?

THE COURT: You know what we are talking about, Mr. Meeker?

MR. MEEKER: Yes, I know what you are talking about, your Honor.

THE COURT: You don't have them?

MR. MEEKER: I have them at the office, your Honor. I didn't plan to offer them myself, so I left them at the office.

THE COURT: Would you object if the defense does?

MR. MEEKER: I have no objection, your Honor.

THE COURT: Do you want the July report in, too, Voyage 63?

MR. MEEKER: That is in, your Honor.

MR. MOLANPHY: He was here to testify, your Honor. It is my understanding that the surveyor from the

cmbr 37

firstvoyage will not be here.

THE COURT: Well, look, Mr. Molanphy, I don't think I should be practicing law for you. My notes show unequivocally, and I rather doubt they are wrong, that what you are looking for is Exhibit A with two addenda, B and C. Mr. Meeker graciously says that he will supply it. Now, are you sure that is what you want to put in?

MR. MOLANPHY. I want to put in the report itself. I don't want the addenda in, your Honor.

THE COURT: So all you want to put in is Defendants' Exhibit A?

MR.MOLANPHY: That's right, sir.

THE COURT: Mr. Meeker does not object, he will furnish that to you and I assume you will get it to me as quickly as you can. Very good.

MR. MOLANPHY: With that I will rest, your Honor.

THE COURT: All right.

Now, does the stevedore want to put anything in, Mr. Camera?

MR. CAMERA: Your Honor, at this point I would like to make a motion to dismiss the third-party complaint on the ground that the third-party plaintiff has failed on the law and facts to show that he is entitled to recover

THE COURT: Well, I am not sure I agree with you,

cmbr 38

though there hasn't beenmuch testimony about your client there is testimony from the chief officer that there were a number of cartons of cocoa butter destroyed at Staten Island because they were reposing in the hot sun.

Now, you may be able to rebut any responsibility, but that suggests to me that you don't get a dismissal.

MR. CAMERA: Your Honor, the only evidence I wish to submit would be the deposition of Mr. Colliagas which I believe Mr. Meeker has introduced on his case.

THE COURT: Well, let's go back and make sure.

MR. MOLANPHY: I believe that's 24, your Honor.

MR. MEEKER: That's correct.

THE COURT: 24.

MR. CAMERA: And with that, I rest, your Honor.

THE COURT: All right. You understand what I am saying. I am not saying that your client is being ruled against finally. All I am saying is there is sufficien in the evidence to hold you in the case in the face of a motion, you see.

MR. CAMERA: I see.

THE COURT: All right.

Now, Mr. Meeker, that brings us around to you again. Now, you have another witness?

cmbr 39

MR. MEEKER: I have two other witnesses, your Honor.

THE COURT: Well, I hope they are going to be brief, but let's take a -- I see Captain Wheeler has been sitting here all day, so I assume he is one of them.

MR. MEEKER: No, your Honor, he is not my witness.

THE COURT: He is just an educated guest. Who else have we got?

MR. MEEKER: I have Mr. Kahan who will testify, the chemist, an expert, and Mr. Goldenberg who will testify as to a test he has run.

THE COURT: All right.

Well, let's take the afternoon recess, about five to ten minutes, then we will resume.

(Recess.)

(In open court.)

THE COURT: All right, Mr. Meeker, now we come to the rebuttal case.

MR. MEEKER: I call Mr. Sidney Kahan.

cmbr 40 Kahan-direct

S I D N E Y K A H A N, called as a rebuttal witness in behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEEKER:

Q Mr. Kahan, where are you employed?

A Fitelson Laboratories Incorporated.

Q What is your position at Fitelson Laboratories?

A I am the director of the laboratory.

Q How long have you been so employed, Mr. Kahan?

A 15 years.

Q What does Fitelson Laboratories do?

A We are consulting and analytical chemists specializing in foods and drugs.

Q Could you give us your educational background, Mr. Kahan?

A Yes. I have three degrees from Columbia University, B.S. and Chemical Engineer, and from Brooklyn Polytechnic Institute Master of Science, Chemistry.

Q Mr. Kahan, are you familiar with cocoa butter?

A Yes, sir.

Q Do you know what the melting point of cocoa butter is?

A Well, cocoa butter doesn't really have a melting

point. It has a melting range. It doesn't melt sharply. It melts over a range of several degrees. And I don't know if you want me to expolain all the possibilities here, but cocoa butter is a very unique and peculiar fat, so that when we say melting point we should amplify a little further. Okay?

Fats, ordinary fat, are not simply chemicals. Salt is pure sodium chloride, and it has a sharp melting point. If you take the melting point of salt it will melt right within a few tenths of a degree.

Fats, natural fats such as any fat or oil that is found in a plant or a seed, such as cocoa butter, is a mixture of at least five to ten different pure chemical substances, each one of them has its own unique specific melting point. So that when you take the melting point of a fat you are actually watching five or seven or eight differe compounds melt, one after the other.

So that you do get a range because of these individual components don't melt at the same temperature they would if you had isolated them and took their melting point. They would melt sharply also. The form butectic mixtures, they form compound within each other, they form physical intertwined substances and you get a range of melting points.

Now, fats also possess another property called polymorphism, which means that the fat can exist in several crystal modifications depending on how it was warmed or cooled or hea treated. And cocoa butter is particularly prone to be able to assume several polymorphic forms depending on how it was crystallized or how it was heated or how it was chilled.

If you chill cocoa butter very rapidly it goes into a sort of unstable polymorphic form which melts at a lower temperature than the stable form does, and by looking at it you can't tell, you have to investigate its properties by other means.

Q Assuming that the cocoa butter in a semi-liquid state was cooled at a temperature of around room temperature, let's say 70, 72 degrees, would that be an unstable polymorphic state?

A If it were quite warm and brought down to 70 degrees rapidly it probably would be in an unstable form, yes.

Q I am talking about in an ambient temperature of about 72 --

A No, if it stayed at that temperature the unstable form will gradually change over to a more stable form, and if you keep it at 72 degrees for any length of time it would gradually assume its most stable form.

Q What do you mean by any length of time?

A Oh, several days or so.

Q Is there any property in cocoa butter which would cause it to heat of itself?

THE COURT: Cause it to what?

MR. MEEKER: To heat of itself, endothermic property.

THE COURT: All right.

A No, cocoa butter is a very stable fat and will remain in its normal form for a long time.

Q Given that a carton, for instance, of this nature, my carton, were exposed to an ambient air temperature of, say, 90 degrees, and give the facts that it is in a relatively stable polymorphic state, would you expect that to melt?

THE COURT: When you say "that," are you referring to Plaintiff's Exhibit 16?

MR. MEEKER: Yes, I am, your Honor.

THE COURT: All right.

A Would I expect the cocoa butter to melt?

Q Yes.

A At 90 degrees?

Q Yes.

A Well, let me amplify that a little bit. When a substance is melted it's in the completely liquid form.

When the substance is soldi it's a completely solid form. At 90 degrees I don't think it would be completely liquid, no.

THE COURT: You are assuming its being inside a glassine bag which in turn is inside a corrugated carton?

THE WITNESS: Yes.

THE COURT: Allright.

THE WITNESS: I think it might be starting to soften or might be on the slightly -- probably at 90 degrees it would not -- it would just -- it would not be soft at all, maybe. I think that's below the normal softening point even of cocoa butter.

I would say it would have to be a few degrees higher than that before it would start to soften, and a good deal higher than that before it would be liquid.

Q When you say a good deal higher in order to be a liquid, what do you mean by a good deal?

A I would think it should be up to about 98 degrees and kept at that temperature before the mass in that box would completely liquify.

Q When you say kept at that temperature, do you have any rough approximation of how long?

A Until the temperature throughout is equalized. Don't forget, when you have a carton like that the outside

will be say at 98 degrees, the inside could still be 10 degrees lower. Because the heast transmission of a substance like that is very slow, and by the time the enter of the carton melted it might take hours or days, I don't know, at least.

Q Mr. Kahan, is there any direct relationship between the amount of say air bubbles in a solidified block of cocoa butter and the meltingpoint?

A I really don't know. I can't give you any definitive answer to that.

Q Do you know whether the physical properties of cocoa butter vary to any great extent between -- as the points of origin or points of manufacture vary?

THE COURT: Are you talking about different location of the rendering of the bean into butter, or are you talking about the growth of the cocoa bean? I am not clear on that.

MR. MEEKER: I am talking about the origin of the raw product, the cocoa bean. Would that very the --

THE COURT: I think you had better change your question then. Rephrase it.

MR. MEEKER: All right.

Q Would cocoa butter made in a geographical area vary in physical properties greatly as other cocoa butter

made in other geographical areas from other beans?

THE COURT: Maybe Mr. Kahan can perceive that this is a clear question, but I cannot, because I could conceive of growing the bean in one area and then transporting it to another area to render it into a liquid along the lines that Mr. Espana told us this morning.

So, which is it? Or both?

MR. MEEKER: Well, basically, do the properties of cocoa beans vary?

THE COURT: Well then, I think that is your question. You don't put it tha- way. So you are going to have to rephrase it so we know which, or both.

MR. MEEKER: All right.

Q First of all, if butter made from certain cocoa beans --

MR. MEEKER: Let me rephrase it.

You stated that the cocoa butter is made up of various --

A Esters. Glyceroids or esters.

Q Yes. Do the percentages of these esters vary with the origin of the beans?

A Oh, yes, there is no natural product that is exactly the same from one year to the next, or one area to the next. Your question said "greatly."

Q Yes.

A I would not say greatly, but I would say that there is a natural variation from area to area. I am not enough of a botanist to know, but I would assume that the trees, the species are the same. They may not be. That could be a difference. The type of fertilizer that is used in the plant, the growing season, whether it's wet or dry, those all have some influence on the crop, and I would expect some variation, although not a great variation.

Cocoa butter is a pretty well known commodity regardless of where it is obtained. But there are variations.

THE COURT: In other words, as you said earlier, cocoa butter is a relatively stable fat.

THE WITNESS: It is. It is one of the most stable.

THE COURT: All right.

Q If direct sunlight were exposed to a carton like this where the ambient air is, say, 90 degrees, would that have an appreciable effect? Supposing you had a carton in the shade at 90 degrees and one in the sun at 90 degrees --

A I am sure the one out in the sun would be warmer than the one out in the shade.

Q Would pressure of weight, would weight applied to that box have a tendency to increase the temperature

of the contents?

A It might, slightly. However, a simple deadweight lying on there probably you would need a delicate instrument to measure any increase in temperature. I would think though that if the weight were shifting and rubbing the cartons one on top of the other that that would create more increase in temperature than merely the fact of the weight being on the carton.

Q Mr. Kahan, are you familiar with the U.S. Pharmacopae?

A Yes, we use it as an official compendium in testing drugs.

Q Would you refer to the Pharmacopae to refer to tests to this cocoa butter here?

A There is a grade of cocoa butter which is labelled U.S.P., United States Pharmacopae, which must be used in the preparation of any drugs, official drugs in the United States must use U.S.P. grade of cocoa butter. I am thinking of things like suppositories. Cocoa butter is uniquely suited because it melts at body temperature, and the basis of practically all the suppositories made in the world, I assume is cocoa butter, and it must meet the U.S.P. standards for cocoa butter, and cocoa butter is listed as one of the official drugs in the U.S.P.

Q But cocoa butter destined for candy bars, does that have to meet those specifications?

A No. No.

MR. MEEKER: I believe that is all the questions I have, your Honor.

THE COURT: Refresh me, Mr. Kahan. At body temperature what are we taking about measurably?

THE WITNESS: 98.6.

THE COURT: 98.6, that's right.

Mr. Molanphy.

CROSS EXAMINATION

BY MR. MOLANPHY:

Q Mr. Kahan, you mentioned in response to Mr. Meeker's question the fact that you would expect pressure, weight on the temperature of the contents of a box such as this. And you said if it was a direct weight, constant weight, you wouldn't expect to find an appreciable change.

A Probably not.

Q But if it was weight in motion in some way that would increase the temperature of the cocoa butter, is that right?

A I could picture some friction between the cartons which could conceivably raise the temperature, yes.

Q Would the normal rolling of a vessel at sea create that type of pressure?

A I don't know how far they would move. If they are tightly stowed one next to the other they might not move at all. If they are loosely stowed and moving about I would expect that motion would be enough.

Q How about just the normal rolling of a well-stowed consignment of cartons? The normal rolling in a vessel at sea?

A Motion of itself would have no affect that I can foresee.

Q How about the motion plus the weight on top?

A None.

Q And this is, I take it, just with reference to an increase in the temperature of the commodity that is inside. You are not testifying about the ability of the box to withstand this --

A I was testifying that if you rub two things together you get friction.

Q Right.

A Cocoa butter and cardboard cartons are not good conductors of heat. If you rub them together they get warm and they will stay warm. If there is a lot of rubbing together I would expect that the temperature would increase and it would stay warm for a while anyway.

Q Mr. Kahan, I think you said it would be about 98 degrees that cocoa butter would become liquid.

A I think that 98 degrees it would be completely liquid, yes, sir.

Q And how about to become what we might call a semi-liquid?

A Well, somewhere between I would say 94 and 98 you would start to get more and more liquid. Now one thing I should --

Q May I --

A Okay, I'm sorry.

Q What I wanted to ask you, then, Mr. Kahan, was you were asked to assume that cocoa butter was poured in a semi-liquid state into a polyethylene bag; do you remember being asked to assume that?

A No, I don't remember that.

Q I think you were asked to assume that in response to one of Mr. Meeker's questions. But if that were so, were poured into that polyethylene bag in a semi-liquid state would that mean to you then, sir, that as of the time it was put into the polyethylene bag it was at a temperature somewhere between 92 and 96 degrees?

A I think it would have to be, yes.

Q Do you --

A No, wait, let me say, at 98 degrees it is completely liquid and you can continue to heat it up to 200 degrees and it will stay liquid.

When you said it had to be between 92 and 98 it could be 120 and still be poured in there. Although --

Q We are talking about it being poured in in a semi-liquid state.

A Semi-liquid, semi-liquid. Okay. Between 92 and 98.

Q Mr. Kahan, do you recognize the pharmacopoeia

as you mentioned before as being authoritative in your field?

A Yes, it is part of the Food, Drug and Cosmetic Act of 1938 as an official compendium.

Q Is cocoa butter also known as bronic oil?

A That is right.

Q Would you agree with this statement that is contained on page 338 of the Pharmacopoeia, melting point, 30 bromo oil melts between 30 degrees and 35 degrees centigrade?

A That is USP grade cocoa butter.

Q And what is 30 degrees centigrade?

A 88.

Q May I show you the page that I referred to, Mr. Kahan, and ask you whether or not the information pertaining to cocoa butter restricts itself to USP grade?

(Handing.)

A By the mere fact that it is in this book it is restricted to USP grade.

Q I see. But it doesn't make any mention of it itself at that page, does it, sir?

A By the way this is not an official USP.

Q Does it mention anything about USP on those two pages that I showed you, sir?

A Would you care to look at it again?

A No drug says it is USP. But the fact that -- the monograph for that drug is in that compendium means that it is a -- that is the USP standard for that drug.

Q Have you, sir, ever been personally involved in the manufacture or processing of cocoa butter?

A No, sir.

MR. MOLANPHY: I have no further questions, your Honor.

THE COURT: Mr. Camera?

MR. CAMERA: No questions of this witness, your Honor.

THE COURT: Thank you, Mr. Kahan.

(Witness excused.)

MR. MEEKER: I call Mr. Goldberg.

H E R B E R T G O L D E N B E R G, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEEKER:

Q Mr. Goldenberg, where are you employed?

A I am employed by the City Testing & Research Laboratories.

Q How long have you been so employed?

A 15 years.

Q What is your position there?

A I am a mechanical engineer and I am the assistant technical director.

Q Could you give us a brief rundown on your educational background?

A Well, I have a degree, Bachelor of Science in mechanical engineering and I am a registered professional engineer in the States of New York and New Jersey.

Q Mr. Goldenberg, were you with City Testing to run a certain test on a box of cocoa butter?

A Yes, we were.

Q Could you tell us whether you ran that test or not?

A Yes. We were requested to expose a box of cocoa butter to atmosphere of 90 degrees of Fahrenheit with a thousand pound load on it ten days and check the results after that exposure period.

Q Could you give us the results of that test?

THE COURT: Excuse me, I am not sure I caught you, Mr. Goldenberg. You took one of these cartons somewhat like that carton out on the table which we call Plaintiff's Exhibit 16?

THE WITNESS: Yes, sir.

THE COURT: Is that what you took?

THE WITNESS: Yes, sir.

THE COURT: You put it under a load of a thousand pounds?

THE WITNESS: Yes.

THE COURT: At a temperature of 90 degrees Fahrenheit?

THE WITNESS: Yes.

THE COURT: For ten days?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. MEEKER:

Q Could you give us the results of that test, Mr. Goldenberg?

A After the ten day exposure period the carton was removed and we found that there was a slight staining of one edge of the carton and the sides appeared to be slightly bulged. We noted some variations in the measurement from before the test to after the test. The length of the box increased 15/16 of an inch, the width of the box remained the same and the height decreased by 7/16 of an inch. That is from the initial measurements of the box as submitted which was not exactly flat and

square on all sides. But subsequent to loading it with a thousand pounds that surface became perfectly flat. And the amount of distortion I don't consider that significant.

Q Could you tell me what --

THE COURT: 7/15 of an inch?

THE WITNESS: 7/16 of an inch.

THE COURT: I beg your pardon.

Q Could you tell us where you received the box from?

A We received it -- it was delivered to our laboratories by the Walker Wayne Company of 78 Wall Street, New York on behalf of the law offices of Hill, Rivkin, Carey, Rosenberg & O'Brien.

Q Does it indicate on the -- did Walker Wayne indicate from where they had received the box?

A There was a delivery receipt and it indicated that it came from the Rainbow Terminal Corporation, Pier 98 South, Philadelphia, Pennsylvania from the Campeche and the delivery receipt was dated 12/30/74 and it was marked Lot ACI, 767.

Q Did the box, when you put this thousand pound weight on the box, was there any support given to the sides?

A No, the sides -- all four sides were unrestrained.

Q In other words, unlike it would be in stow where the box is supported by boxes on either side?

A That is correct.

THE COURT: Did you open the box after the ten-day period and examine the glassine, or polyethylene envelope?

THE WITNESS: No, I did not.

THE COURT: You did not?

THE WITNESS: No.

Q Mr. Goldenberg, I show you this and I wonder if you can identify it.

(Handing.)

A If it has my signature and a stamp, inspected with the City Testing logo that is the box that came from the test, that was subjected to the test. And that is the box.

MR. MEEKER: I would like to have this --

THE COURT: Marked?

MR. MEEKER: I hate to do this to you.

THE COURT: I am glad you are in excellent shape, Mr. Meeker. Those things are not light.

(Plaintiff's Exhibit 26 marked for identification.)

xx

MR. MEEKER: I would like to offer it in evidence as Plaintiff's Exhibit 26.

MR. MOLANPHY: Your Honor, with the understanding that it came off a shipment in 1974 --

THE COURT: Oh, that is clear.

MR. CAMERA: In December of 1974.

MR. MOLANPHY: December of 1974.

THE COURT: Right. However, it does seem to be quite -- it seems to come from the same plant in Mexico and the --

MR. MOLANPHY: I believe that is probably so, yes, your Honor.

THE COURT: And the carton seems in all ways substantially identical with what we call Plaintiff's Exhibit 16.

MR. MOLANPHY: I think so, your Honor. Yes.

THE COURT: All right, it will be received.

(Plaintiff's Exhibit 26 received in evidence.)

xx

MR. MEEKER: I don't think I have any more questions, Mr. Goldenberg, thank you.

THE COURT: Do you have any idea what caused the staining on this carton, Mr. Goldenberg?

THE WITNESS: Well, it is evidently due to cocoa butter. There could have been cocoa butter on the

outside of the -- on the inside wrapper, polyethylene wrapper.

THE COURT: All right. Mr. Molanphy?

CROSS EXAMINATION

BY MR. MOLANPHY:

Q Mr. Goldenberg, in giving testimony here today were you referring to some notes of yours?

A Yes, I was.

MR. MOLANPHY: May we have these marked for identification, your Honor?

THE COURT: Very well.

THE WITNESS: The report from the City Testing Laboratories reference is 049238.

THE COURT: You don't mind the lawyers looking at that, I assume?

THE WITNESS: No.

(Handing.)

MR. MOLANPHY: Thank you.

(Defendant's Exhibit Q marked for identification.)

xx

MR. MOLANPHY: Could I take just a second with counsel, your Honor?

THE COURT: You and Mr. Camera look at that.

Are your laboratories here in Manhattan?

THE WITNESS: Yes.

BY MR. MOLANPHY:

Q Mr. Goldenberg, your report Exhibit Q marked for identification indicates that four cartons were submitted to you for testing, is that right?

A Yes, sir.

Q And were they both tested?

A No, just one.

Q Just one was tested?

A Yes.

Q Do you know where the other one is now?

A It is in the laboratories wrapped as received.

Q Did you participate in this test yourself, sir?

A Yes, I did.

Q There is a portion of the report here which refers to procedure and were you present and did you participate in that portion of the testing referred to as proceedure?

A Yes, I participated in the entire test program.

Q And according to the report a uniformly distributed load of 1,000 pounds was applied to the carton; is that how it was done, sir?

A Yes.

13 cmrf Goldenberg-cross 2072

Q What instrument was used to apply this uniform pressure of 1,000 pounds?

A Well, we use dead weights to apply the pressure. We put a board on top of the carton and then apply dead weights to it at various increments of 40 pound and 20 pound weights.

Q And are these lead weights?

A No, steel.

Q Stell?

A We use for other test equipment.

Q And they are placed on top of that board, is that correct?

A Yes.

Q Was the board that was used in this case the exact same dimension as the surface of the carton?

A No, it was a little larger.

Q It was larger?

A Yes.

Q In all directions?

A In all directions.

Q In all dimensions?

A In all dimensions.

Q Were the weights placed in the exact center of the piece of wood?

A Well, they were spread over the board.

Q They were spread over the h ard?

A And piled up.

Q And these were in varying weights of 40 and 20 pounds, you say?

A Yes.

Q How many such weights altogether?

A Enough to add up to 1,000 pounds.

Q And were these weights distributed evenly over the board?

A Yes, fairly evenly.

THE COURT: Including the weight of the board at the end of the last statement.

Q Were they added one at a time?

A Yes.

Q By hand?

A By hand.

Q By you, sir?

A With my assistants.

Q Was any attempt made during the course of your te[illegible], Mr. Goldenberg, to imitate the motion of cartons of cocoa butter in stow aboard a vessel as it is being transshipped from Mexico to New York?

A No, sir. No, they were placed in a test

chamber that was heated at 90 degrees"F" with the weights applied to it.

Q And it remained in that one constant position throughout the test?

A Yes.

Q It wasn't subject to any sideward motions or pressures of any kind?

A No, the sides were unrestrained.

Q Was it the object of your test, Mr. Goldenberg, to create the exact same amount of pressure on each square inch of surface of the carton?

A The object of the test was to load up this chart with 1,000 pounds. And the only way to apply 1,000 pounds to a carton of this size without having excessive height was to spread it out over the entire surface of the carton.

Q And distribute that evenly over the entire surface?

A Yes.

Was it, if you recall, was the temperature applied to the carton before the weight was put on it?

A No.

Q The temperature was applied after the weight was put on?

A After the weight was put on it.

Q Was any of this staining present on the outside of the carton before the carton was exposed to 90 degrees temperature?

A There was no staining present.

Q Do you know what the moisture content of the air was in the chamber where this was tested?

A No, I do not.

Q Is it recorded at all?

A No.

Q Would it be other than normal room atmosphere?

A It would be normal room atmosphere for the -- it was heated air, what would be normally expected for heated air at 90 degrees subjected to normal conditions here in New York.

MR. MOLANPHY: Could I have just a moment, your Honor.

THE COURT: Yes.

MR. MOLANPHY: I have no further questions.

THE COURT: Mr. Camera?

CROSS EXAMINATION

BY MR. CAMERA:

Q Mr. Goldenberg, was this box opened prior to the testing?

A No.

Q Were the contents in any way examined prior to testing?

A No.

MR. CAMERA: I have no further questions, your Honor.

THE COURT: Anything more, Mr. Meeker?

MR. MEEKER: That is all I have, your Honor.

THE COURT: Thank you, Mr. Goldenberg, you may be excused, sir.

(Witness excused.)

THE COURT: Now, does the plaintiff rest?

MR MEEKER: Plaintiff rests, Your Honour.

THE COURT: Do all sides rest?

MR. MOLANPHY: Yes, Your Honour.

MR. CAMERA: Yes, Your Honour.

THE COURT: Mr. Meeker, I obviously have your proposed findings of fact and conclusions of law.

MR. MEEKER: Yes, Your Honour.

THE COURT: But, tell me, how do you claim this happened?

MR. MEEKER: Your Honour, I believe there is no evidence that the temperature exceeded 87 degrees from the time it left the shipper's warehouse until the time it got on board the vessel. The shipper testified that he keeps his warehouse at 18 to 21 degrees, he testified that the trucks left, covered trucks, they travelled at night, there was a period of -- it was shipped from the warehouse from the warehouse from the 10th of July until the 12th of July in various trucks.

The Government of Mexico has furnished a temperature report saying it never got above, I think, 87 degrees during that period of time where it could have been in transit.

THE COURT: What about under the sheds at

Coatzacoalcos, were those tin roofs?

MR. MEEKER: These are ventilated sheds.

THE COURT: I know, but they were under the sheds there for quite awhile, weren't they?

MR. MEEKER: No, no. The indications are in the exhibits we have introduced that some of the cocoa butter came directly off the trucks on to the ship. Some of them did come from the sheds, but it could have been only a period of two or three days;they were in the sheds out of the sunlight, Your Honour.

THE COURT: Yes, but those hot tin roofs, you have heard that expression.

MR. MEEKER: Well, Your Honour, these warehouses are something like fifty feet to the ceiling, they are very well ventilated.

THE COURT: Yes, they are not small, that's for sure.

MR. MEEKER: And the lot in the number four 'tweendeck outturned without damage, which is the highest part of the ship and should by the book have higher temperatures.

THE COURT: Yes. But according to the chief officer they put a row, a tier -- tier is a bad word -- they put down dunnage and then on top of that layer of

dunnage they put canvas and then they put some more dunnage, and then they interspersed dunnage as they tiered up, and I don't think you tiered anywhere near eighteen to twenty-two, I don't think they could have, they only tiered up around seven or eight high.

MR. MEEKER: The point is, how did it heat up, Your Honour? Obviously it got up to ninety-two degrees. I don't know how it heated up. I'm just going on a theory.

THE COURT: I'm just wondering if what happened was that some of this cocoa butter was in the semi-liquid state when it went aboard the vessel.

MR. MEEKER: I think, Your Honour, that if that were the case it would have showed itself either in the handling of it, because these boxes are not that thick, I'm sorry to say, and you could have felt the softening and furthermore, since this box is apparently tied I think you would have had a leaking and it would have stained the carton.

THE COURT: Well, it might not have been enough time for it to really start seeping through the polyethelene, though I have strong doubts that these were ever sealed, I think they were just tied-off like bags of wheat.

MR. MEEKER: Yes, that's very possible.

THE COURT: But, on the other hand, it is possible to tie them even in such a way so that it is hard for liquid to seep out right away. But, in any event --

MR. MEEKER: If that were the case I would think that at least some of the cartons that were in a semi-liquid state would have wound up in number four. There has been testimony there was no damage in number four.

THE COURT: It could have happened that in a combination of circumstances such as how it was poured at the plant. Mr. Kahan and Mr. Espana seem to agree that a lot depends on how fast you heat up or cool this substance.

MR. MEEKER: Yes, and the testimony of the shipper, which I believe you have, that it was -- it was not read into the record, but --

THE COURT: No, I have that, that's right.

MR. MEEKER: (Continuing) -- was that it was melted -- it solidified at room temperature, which Mr. Kahan testified to was a reasonable way to do it and it would not cause an unstable --

THE COURT: No, if it's kept a long period of time it should be very stable. I really -- well, what

makes you think those oil drums were that hot?

MR. MEEKER: That's the only logical explanation I can think of, Your Honour, unless they started a bonfire down there.

THE COURT: Well, let's assume that you are right about that; is that the vessel's fault? I don't quite see --

MR. MEEKER: Well, it's the vessel's duty to take care and custody of the cargo. It's the testimony of the chief mate also that the damage would not have occurred if it was stowed in number three. It's also his testimony that he never handled cocoa butter before and never had any special instructions about cocoa butter.

THE COURT: Well, I don't know what special instructions would have done in any event.

MR. MEEKER: I think he should have at least known the melting point of cocoa butter. There is also testimony that no one inspected the holds during the voyage.

THE COURT: Well, again, supposing they had? I'm not sure they would have seen this.

MR. MEEKER: It's possible.

THE COURT: Because we all seem to agree that

the outturn at Staten Island, the top tiers came off in good shape so far as you could see from the --

MR. MEEKER: Yes. What I was trying to get at, since nobody made an inspection no temperatures were taken of the holds, they took no special precautions of the cargo, didn't know the melting point. It all adds up to a situation where they really didn't care too much about the cargo.

THE COURT: Well, may I say that I wouldn't push the melting point too hard, because as your own witness pointed out cocoa butter really doesn't have a precise melting point.

MR. MEEKER: It has a range of two or three degrees, Your Honour.

THE COURT: There seems to be a little bit of difference about that. And also the ship's witness this morning said something which Mr. Kahan I am certain would agree with, that a lot depends on the -- on where the fat, or, where the cocoa butter comes from, how fast it's heated, how fast it's cooled has a meaning. It depends on how many chemicals are involved.

Do you remember what was said this morning that you can have cocoa butter of certain categories or kinds from certain parts of the countryside which might

start melting around twenty-seven degrees Fahrenheit.

MR. MEEKER: I believe that allegation was made, but I think --

THE COURT: Well, Mr. Kahan seemed to more or less confirm that. He didn't use the same --

MR. MEEKER: Of course, but I believe he also stated that in that sort of a situation you would have to have a very unstable product. He stated that under the conditions that were testified by the shipper that you would not have an unstable product. And if that were the case we come back to the conundrum of why did it melt in number one and not number four?

THE COURT: Well, the --

MR. MEEKER: I don't think the ship has come up with any evidence why that happened. The only thing he has said is that if he had stowed it in number three it wouldn't have happened.

THE COURT: Well, I don't know who said that. I guess that must be in one of the depositions.

MR. MEEKER: Yes, Your Honour, it is in Captain Villa's first deposition.

THE COURT: That seems rather a conclusory statement. I don't know what that proves, really.

MR. MEEKER: Well, I think there is an awful

lot of facts behind it to back up the conclusion.

THE COURT: Well, I have got to re-read that. I haven't even glanced at it since December 23rd. All right. Let me ask Mr. Molanphy and get his view on this.

MR. MOLANPHY: Your Honour, there was testimony given when we were all down in Mexico by the shipper and by the steamship company's agent down there that the average summer temperature inside those storage facilities is about forty degrees centigrade. Both of them agreed on that, the shipper and the steamship company's agent

The testimony of the shipper was to the effect that the shipments for this -- the truckloads for this particular shipment arrived anywhere between two and three days beforehand.

THE COURT: Well, that, of course, is the point I was driving at with Mr. Meeker, essentially.

MR. MOLANPHY: The steamship company's agent said that sometimes the stuff comes seven and eight days beforehand and stays in the warehouse, and as long as there is room in the warehouse. If there is no room it stays outside in the sun.

MR. MEEKER: I don't believe he said that.

MR. MOLANPHY: I do.

THE COURT: Well, in other words, you are

arguing that some parts of this shipment went aboard in a fairly liquified, or, semi-liquified state because of what went on at Coatzacoalcos.

MR. MOLANPHY: I don't know how far it progressed, Your Honour, but I do believe that this melting had a fairly good head start before it even got on board the ship.

Now, as far as conditions on board the ship are concerned, temperature of the hold, the only testimony as to the -- what that cocoa butter looked like down among the drums after it was discharged was that it was hard.

THE COURT: Not on the very floor of hatch number one.

MR. MOLANPHY: Yes, sir.

THE COURT: I noticed that that's what the chief officer noted in the log entry.

MR. MOLANPHY: Now, when Your Honour mentioned the idea of the height to which this cargo was stowed, I think if Your Honour will look at the cargo plan it indicates that both Mr. Meeker and the captain were correct, hard as that may sound to believe, the cargo was stowed in the form of an "L".

THE COURT: Yes, I know.

MR. MOLANPHY: And it is conceivable that the portion of the cocoa butter which was immediately adjacent to the athwartship bulkhead was in fact stowed no more than eight to twelve high.

THE COURT: Yes.

MR. MOLANPHY: But the other portion, I believe, was substantially more than that.

THE COURT: Yes, that could be.

MR. MOLANPHY: And in the testimony of the shipper by deposition he was asked to what height does he stow it in his warehouse, and he said eight to ten. Then he was asked, well, what happens if you stow eight to ten high, and he said they get crushed. I think we have instructions right on the outside of his own box that says not to be stacked more than thirty high.

THE COURT: Well, you know I am a little -- first of all, even Mr. Meeker will admit that the cartons in this case are by no means as good quality for export as the cartons used by Mr. Emilio Espana's firm. There is no doubt about it. So much better in every way. The only trouble is I am not sure that it would have made much difference if the cocoa butter was properly hard, I'm not sure that weight alone, in fa[illegible], I th[illegible] Mr. Goldenberg's test proves that weight

alone doesn't necessarily damage the butter too much.

MR. MOLANPHY: Well, I think the type weight that is applied in a hothouse setting where it's constant pressure applied over a surface that exceeds the dimensions of the carton itself can in no way be proximated to the conditions which are experience by a similar carton in stow aboard a vessel.

THE COURT: Well, aren't you proving too much against yourself there? What are you trying to argue, that the --

MR. MOLANPHY: The results of his test aren't necessarily indicative of what would happen to a carton, the drawbacks of which were testified to by Mr. Espana when the corners of the carton are subjected to torsion and pressures other than a direct weight from above.

Now, if this twists the carton to the point where it no longer is capable of sustaining weight above it then once it gives then all the weight is down on this cocoa butter which is in, we believe, in a semi-liquid state as of the time it is put into the lower hold, that's what causes the bags to burst.

THE COURT: So your theory is the one I am trying to smoke out of you, namely that it so happens that what went aboard down the number one hold was in

a semi-liquid state and through some good fortune that that went into number four 'tweendeck was in a better, or firmer state; is that correct?

MR. MOLANPHY: Not only that, sir, but it wasn't stacked nearly as high in the 'tweendeck and didn't have that amount of weight above it. I think that's why the damage was found in the lower portion of the stow and not up above.

THE COURT: But doesn't this play in part into the hands of ACLI? Mr. Meeker can say, you see, that's exactly what we are saying, you stacked this wrong, negligent handling.

MR. MOLANPHY: The instructions on the outside say you can stack this up to thirty high, and that's on the shipper's own box, and he himself testifies that, I would never stack them more than eight or ten high.

THE COURT: But he would argue that it somehow was the duty of the ship to find out how to handle cocoa butter.

MR. MOLANPHY: They gave no special instructions, Your Honour, except that they wanted it stowed below the waterline, and it just so happens that the stow that was above the waterline wasn't damaged at all.

THE COURT: I think everybody will agree from looking at the ship loading plan and the ship configuration that this butter which was down in the number one hold was below the waterline.

MR. MOLANPHY: Yes, sir.

MR. MEEKER: Yes.

THE COURT: There is no dispute on that. There is no dispute that no temperature readings were taken.

MR. MOLANPHY: That's right, Your Honour. There was ventilation on the northbound voyage.

THE COURT: All right. We have heard about that. But there was no actual inspection.

MR. MOLANPHY: Right.

THE COURT: Of course I don't see how anybody could really have inspected this anyhow no matter what they do, except crawl around on the top of it which probably as it turns out wouldn't have helped.

MR. MOLANPHY: Right. Where the damage shows up in the lower hold and I think it is significant that when they finally did get down there they found out that the cocoa butter that had burst through was now hardened so that the temperature in the lower hold was not sufficiently hot --

THE COURT: In other words, you use this to torpedo his hot lemon oil drums theory.

MR. MOLANPHY: Yes, sir. Yes, sir. And I think any carton, if he were to take, oh, say Mr. Espana's carton and allow the cocoa butter in there to melt I don't think he would have any damage done, I doubt if he would even have staining because the carton itself is sufficiently strong to withstand the compressive force of weight from above. And if you don't have this combination of the proclivity of cocoa butter to melt at a given temperature plus the inability of the cocoa butter thereafter to in itself support the carton, then this poor carton has got to take all the weight from above all by itself. And if it's insufficient as a carton, then the whole thing just collapses and the bag bursts. And I think that's what happened in the lower portion.

THE COURT: All right. Let me see if I get you clearly. What you are saying is that, number one, due to excessively lengthy storage of a portion of the total shipment at Coatzacoalcos in these sheds under these metal, or tin roofs, and perhaps to an extent outside, some of this cocoa butter went aboard the Campeche in a liquid, or semi-liquid state.

MR. MOLANPHY: I believe --

THE COURT: And it happened that that was in that condition, was stowed not in the number four 'tweendeck area, but down in the number one lower hold aft; right?

MR. MOLANPHY: Yes, sir, although I don't think that's quite necessary, an essential ingredient, because the stuff in the number four 'tweendeck was never subjected to that pressure that would cause the lower ones to burst.

THE COURT: I see. Your theory is that it could have been -- both portions of this shipment could have been in a semi-liquid state, but what happened was that it was sufficiently cool on number four 'tweendeck for it to stabilize particularly since it was not under any pressure.

MR. MOLANPHY: Most particularly because it was not under any pressure, yes, Your Honour.

THE COURT: Well, there must have been some temperature aiding it, otherwise it wouldn't have hardened.

MR. MOLANPHY: Right, sir.

THE COURT: And nobody took any temperatures.

MR. MOLANPHY: That's the testimony, Your Honour.

THE COURT: Does the log give the temperatures by somebody each day?

MR. MOLANPHY: I think it gives certain temperatures at four o'clock in the morning on some days, Your Honour.

THE COURT: Well, this is in Spanish, of course. Incidentally, what are you going to do about getting a translation for Mr. Meeker? I gather you don't want anything except what you had captain Villes Dominguez put in?

MR. MOLANPHY: That's all that I thought was essential to me, Your Honour.

THE COURT: Do you want to borrow this, Mr. Meeker, so you can find out whether --

MR. MEEKER: I would like to find out whether the temperature readings are in there.

THE COURT: Well, I turn over to you -- it is not marked in evidence yet, but it is in fact in evidence -- defendant's exhibit N, and then could you get that to me in a few days after it serves your purpose?

MR. MEEKER: I certainly will, Your Honour.

THE COURT: And you will give me that exhibit A which Mr. Molanphy wants to put in, the Lloyd's survey for the May voyage.

MR. MEEKER: Yes, Your Honour.

THE COURT: Now, Mr. Camera, you argue that Pittston's longshoremen were expert and careful and all the rest, and they didn't do a darned thing wrong with regard to any of this butter; is that correct?

MR. CAMERA: That's correct, Your Honour.

THE COURT: Well, there seems to be some evidence that they pulled the butter out on the yards over there in Staten Island and there she languished in some of that splendid July New York sun that we are so soon at getting once in awhile around here.

MR. CAMERA: I believe, Your Honour, the survey report indicates that the cargo, this particular cargo of cocoa butter, was in such a damaged state when it was removed from the vessel --

THE COURT: -- that it didn't make any difference?

MR. CAMERA: (continuing) -- that it didn't make any difference at all.

THE COURT: What do you say about that, Mr. Molanphy? What is your claim against Pittston?

MR. MOLANPHY: Your Honour, I think the testimony of the manager of ACLI, as well as the testimony of one or more of the people engaged by ACLI to go down

and look over this cargo was to the effect that it was a good bit worse off the second time they went back to look at it than the first time, and --

THE COURT: And your point there would be that cocoa butter can be, how shall I put it --

MR. MOLANPHY: -- salvaged.

THE COURT: (Continuing) -- salvaged, or resuscitated, provided it doesn't deteriorate too much.

MR. MOLANPHY: Yes, Your Honour. And for the record, Your Honour, can I make my motion to dismiss the complaint?

THE COURT: Oh, yes.

MR. CAMERA: I join in that motion, Your Honour.

THE COURT: All right. I will reserve decision on the motions to dismiss, and --

MR. CAMERA: Your Honour, I would also like to renew my motion to dismiss the third party complaint.

THE COURT: Yes, and I will reserve decision on that, once again.

Now, gentlemen, as far as I am concerned I do not insist upon any further papers from you, meaning by that any further findings or any further briefs or anything. On the other hand, if you want to submit something, why, I wouldn't resist that. I leave it

solely up to you. What is your preference?

MR. MEEKER: Personally I would prefer to put in a post-trial brief, Your Honour.

THE COURT: Would you?

MR. MEEKER: Yes.

THE COURT: Well, there is one problem with those things, and that is that they are one of the greatest little causes of delay known to man. Historically in this Court, particularly on the admiralty side, they have been used purposely and wilfully by Judges and lawyers alike, and that troubles me.

I'm not sure that I really want to put you to the trouble for that reason, plus I don't really want to burden you with anything extensive because I don't think it is needed.

MR. MEEKER: I think the reason I would like to do it, Your Honour, is because there is such extensive testimony taken in Mexico that is being relied on by both myself and defendant --

THE COURT: Oh, yes.

MR. MEEKER: (continuing) -- that I think it would make the issues clearer to The Court.

THE COURT: Well, O won't argue with you. As I said, if you want to do it, fine. What about you

gentlemen?

MR. MOLANPHY: Your Honour, if Mr. Meeker intends to submit one I think I had better, too. I would prefer to -- I think if he intends to --

THE COURT: Why don't you wait until you see the colour of Mr. Meeker's things, and if you want to call me up if you want some time to put an answer to that, you may.

Now, Mr. Meeker, do you want to do this after the transcript is transcribed, or do you want to do it on your notes, or what do you want? It makes little difference as to the time.

MR. MEEKER: I believe I could do it from my notes, Your Honour.

THE COURT: Well, in that event then I am going to ask you to submit whatever you care to submit in two weeks, and then I will leave it up to Mr. Molanphy and Mr. Camera to call chambers and indicate what you want to do, and then I will give you time then, probably about a week or ten days.

MR. MOLANPHY: Thank you, Your Honour.

THE COURT: Well, thank you. You moved with great dispatch for which I salute you. Decision reserved.

- 0 -

UNITED STATES DISTRICT COUT

SOUTHER DISTRIC OF NEW YORK

ACLI INTERNATIONAL, INC.,

Plaintiff,

- against -

S.S. CAMPECHE, engines, boiler etc., TRANSPORTACION MARITIMA MEXICANA, S. A. dba. Mexican Line *73 Civ. 1297 HRT*

Defendant and Third-Party Plaintiff,

TRANSPORTACION MARITIMA MEXICANA,

- against -

PITTSTON STEVEDORING CORPORATION,

Third-Party Defendant,

ACLI INTERNATIONAL, INC.,

Plaintiff

- against -

TRANSPORTACION MARITIMA MEXICANA, S. A. dba. MEXICAN LINE, and SMITH & JOHNSON (SHIPPING) INC. *73 Civ. 5341 HRT*

Defendants

Civil Court of the City of New York

Country of New York.

GILL & DUFFUS

Plaintiff

Index # 69965/73

- against -

TRANSPORTACION MARITIMA MEXICANA, S. A.

dba. MEXICAN LINE

Defendant

----------x

GILL & DUFFUS

Plaintiff

Indx # 69968/73

- against -

TRANSPORTACION MARITIMA MEXICANA, S. A.

dba. MEXICAN LINE

----------x

DEPOSITION of FREDERIC W. MEEKER, taken before Ileana Ainuja, held at the office of Transportación Maritima Mexicana, S. A. Av. Juárez #207, Coatzacoalcos, Ver., Mexico, on January 15, 1974, at 1:00 a.m. pursuant to Notice dated

APPEARANCES:

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of Counsel

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto through their respective counsel that signing, sealing, certification and filing shall be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the questions, shall be reserved to the time of the trial.

THE WITNESS HAS BEEN SWORN.

EXAMINATION BY

MR. MEEKER:

Q Please state your name for the record.

A Mr. José Ruíz

Q State your address.

A Zaragoza # 303

Q By whom are you employed?

A Tomás Ruíz, S. A.

Q On what capacity?

A As a partner.

Q How long have you been employed by Tomás Ruíz, S. A.?

A For more than 30 years.

Q Mr. Ruíz, we are going to be concerned today for 8 shipments of cocoa butter from vessels between May 1968 and August 1972, shipped aboard of 3 - Mexican Line vessels. Did Tomás Ruíz, S. A. - handled these shipments?

A As shipments agents for Mexican Line only

Q From whom are these shipments received? When does Tomás Ruíz take custody of these shipments?

A When the trackage are along side of the vessel.

Q From whom do you take custody?

A We do not take custody of the vessel, we receive the cargo and put it aboard ship.

Q From whom do you get the ...

A Customs broker.

Q Who is the customs broker?

A Mr. Baldomero Ruĭz.

The address for Mr. Baldomero Ruĭz?

A Same here Juárez # 207

Q What is the Company Mr. Baldomero Ruĭz works for?

A The same.

Q Are there any agreements between Tomás Ruĭz, S. A., and Baldomero Ruĭz, S. A.?

A Agreements? what do you mean?

Q A contract.

A No, any

Q You understand that the cocoa butter is transported from Cárdenas to Coatzacoalcos by trucks. How -- High?

A Not very high.

Q Could you tell me what happens to the cocoa butter after it arrives to Coatzacoalcos?

A It is stored here.

Q Who unloads the trucks?

A *The stevedors union.*

Q *Who pays for the service?*

A *Custom broker*

Q *Do you know who pays for the warehouse storage charges?*

A *Custom broker*

Q *Who moves the cocoa butter from the warehouse to the vessel?*

A *Stevedors union. Only one steevedors union do the unloading and loading of the trucks.*

Q *You mentioned that the stevedores have contract for all the moving. With whom is that contract?*

A *It use to be with Puertos Libres before, and now with Servicios Portuoarios del Istmo de Teluantepec with the approval of Sretaria de Comunicaciones.*

Q *Does the stevedors union have any contract with Mexican Line.?*

A *No*

Q *Is it your testimony, is it true that the first time Tomás Ruĩz comes into custody of the cargo is when the trackage is along side of the vessel?*

A *Yes*

Q *What does Tomas Ruĩz do at that point.?*

A When the ship arrives we order the stevedors for so many guies to work in the same aboard the vessel and star loading the ship.

Q Who pays the stevedors?

A Tomás Ruíz, S. A. in the acccount of Mexican Line.

Q Who signs the bills of ladings for the cargo, who gives approval of this sheet?

A In some cases the bill of ladings are signed by the mastes, but in case of Mexican Line are signed by Tomás Ruíz, S. A.

Q Have any records showing the condition of the cargo when you receive and store it at the warehouse.

A Well, we have some tally sheets supplied by the union of stevedors that reports when so many cartons are apparently damaged.

MR. MEEKER: I will read a list of the shipments we are concerned. I first red the date of the bill of lading, then the vessel and the amount of cartons of cocoa butter.

May 18/1968	CAMPECHE	2500 Cartons
July 13/1968	CAMPECHE	6400 "
February 13/1972	JALAPA	2000 "
March 12/1972	JALAPA	4000 "
May 13/1972	MERIDA	2000 "
May 13/1972	MERIDA	1000 "
June 10/1972	MERIDA	3000 "
August 19/1972	MERIDA	1500 "

Q I would like to ask you, Do you have any damage reports for these shipments?

A Yes we did.

MR. MOLANPHY:..... Some record to Mr. Ruĭz.

MR. MEEKER: The records indicate, Mr. Ruĭz so refers to the number of documents. I have the document dated - May 18/1968.....as well as 2 ... but seems to be the -- stowage list of voyage 61 Campeche and ask same for -- identification as plaintiff exhibit N.° 1.

Mr. Ruĭz I show you these documents we marked for identification.

A This is a tally sheet.

Q Is there any damage indicated in the tally sheet?

A Not on this one.

Q And in the separate list attached, is there any --- damage.

A No, it is never shown in the list.

Q Is the damage shown in a separate list?

A It is included here when there is damage.

Are there any other documents for this voyage 61 Campeche which shoes if some or all of this cartons were damaged?

A I have no documents here to show.

Q Can you refer to your records and tell me weather you have an order damage in May 18/1968?

A Have to look in the files and see if I can find them.

MR. MEEKER: For the record the defendant counsel has indicated that the records of Tomás Ruĭz, S. A. when -- checked for damage reports of May 18/1968 voyage of the Campeche will be presented when located.

Q Mr. Ruĭz, do you have similar records for the - July 13/1968 voyage of the Campeche?

A Is the same, they are not here.

MR. MEEKER: Let the record indicate that Mr. Ruĭz has produce a tally sheet, a due of the stowage sheet for the july 13/1968 voyage of the Campeche which I ask to be -- marked for identification as plaintiff exhibit N.° 2.

Q Mr. Ruĭz on these documents marked for exhibit N.° 2 Are there mark any damage report for this voyage?

A July 13/1968? I guess, I do not record, I am quite sure - there most be some report.

Q Apparently files can be located.

A Apparently, I most loock.

Q If you would loock again, Will you please forward these to your attorney?

A Sure.

Q Do you held records for the February 13/1968 -- voyage of the Jalapa?

A Yes, right here.

MR. MEEKER: Let the record indicate that Mr. Ruĭz has produced some documents, a tally sheet, an exception list, a letter from Baldomero Ruĭz of April 27/72 and a stowage list for the Jalapa voyage 88. I would like the documents - mark as plaintiff exhibit N.° 3 for identification.

Q *Mr. Ruíz refers to plaintiff exhibit N.° 3. The exception list would you tell me how many cartons -- full of cocoa butter from Industrializadora de Cacao de Tabasco, how many carton were accepted?*

A *88*

Q *88 cartons?*

A *88 Cartons*

Q *Mr. Ruíz after leave the shipment of February 13/ 1972 would plaintiff exhibit 3 refers to the bill of - lading that was issued by Tomas Ruíz, S. A. for - the master stated clean on board for the 2000 cartons and I show you the copy from my record of -- bill of lading Feb. 13/1972 N.° 7 for the Jalapa for 2000 cartons of cocoa butter and ask if that bill of lading was issued for the cargo described in plaintiff exhibit N.° 3.*

A *Yes, Sir.*

Q *The exception list indicates external damage of 88 cartons, why the exception list was not included in the cargo list,?*

A *Because the shipper issued a letter of guarantee in order to obtain a clean bill of lading.*

Q *I believe you have referred to the letter of Baldomero Ruíz. April 27/72.*

A *Yes sir, that is right. These 88 cartons do not belong to the same list of 20 cartons in ....*

Q This letter of the 88 cartons, only 20 belong to bill of lading N.° 7.

I ask that the copy of the bill of laaing N.° 7 dated - February 13, 1972, be marked as plaintiff exhibit N.° 4 for identification

Q Mr. Ruiz Do you have record for the March 12/72 voyage of the Jalapa.

A Yes sir.

MR. MEEKER: Let the record indicate that Mr. Ruiz has produce a tally sheet, a stowage list and exception list and a letter of indemnity from Mr. Baldomero Ruiz dated June 8/72.

Mr. Ruiz I show you a bill of lading for N.° 3 dated march - 12/72 in the vessel Jalapa for 4,000 cartons of cocoa butter that was issued clean on board. Ask, is the shipment, but the sheet mis your document refer?

A 25 cartons.

Q I ask that Mr. Ruiz document of march 13/72 voyage of the Jalapa be marked for identification as plaintiff exhibit N.° 5 and that the bill of lading of the same voyage be marked for identification as plaintiff exhibit N.° 6. March 12/1972.

Q Mr. Ruiz the letter of idemnity apparently agrees to identify Mexican Line from of 25 damage - cartons is that correct?.

A Yes sir,

Q And the bill of lading was issued clean.

A That is correct.

Q Mr. Ruiz have you similar documents for the Merida voyage of May 13/72 for 2,000 cartons?

MR. MEEKER: Let the record show that Mr. Ruiz has - produced a tally sheet, a stowage li[illegible] and an exception -- list for voyage 9 of Merida and I would like these documents to be marked for plaintiff exhibit N.° 7 for identification.

Q Mr. Ruiz in the exception list there is a note at the bottom showing that the bill of lading was issued - clean against letter of guarantee from the shipper. Would ask if you have cop[illegible] of the letters of guarantee.

A Yes sir, N.° 2 for 2,000 cartons. The letter of guarantee was only for bill of lading N.° 1 and not for N.° 2.

Q I show you the bill of lading N.° 2 May 13/1972 from the Merida. Ask if that bill of lading refers to cargo in plaintiff exhibit N.° 7. Is it your testimony that - no letter of guarantee was issued for that shipment?

MR. MEEKER: I ask that bill of lading N.° 2 referred above to be marked for identification as plaintiff exhibit N.° 8.

Q Mr. Ruiz, do you have documents covering the same voyage of the Merida May 13/72 and signed to Gial.

A Merida voyage N.° 9?

Q I show you again plaintiff exhibit N.° 7, the exception list and ask for any exception that was taken in the bill of lading N.° 1.

A With 48 cartons that we guarantee.

Q Do you have copy of the letter?

A Copy of the letter of guarantee? No, It was not attached but there was a letter.

Q Are you able to produce that letter?

A Yes

Q And will you forward this letter to Mr. Molanphy?

A Yes, give me a list of what you need Mr. Molanphy.

Q I show you bill of lading N.° 1 dated May 13/1972 - from Merida voyage 9 and ask if that refers to --- document in plaintiff exhibit N.° 7.

A Yes

Q I ask to have this bill of lading N.° 1 dated May 13 - 1972 to be markd for identification as plaintiff ---- exhibit N.° 9.

Q Do you have record for Merida voyage N.° 10?

A Yes

MR. MEEKER: Let the record indicate that Mr. Ruíz has produced a stowage list, a tally sheet and exception list - and a letter of guarantee from Baldomero Ruíz dated June 20/72 for bill of lading N.° 7 for 48 stained cartons.

Mr. Ruiz, I show you the Mexican Line bill of lading dated June 10/72 of Merida voyage N.° 10 and ask if that bill of lading refers to cargo referred in docu-- ment you just handled to me.

A Yes Sir.

Q I like to be marked for identification this time, Mr. Ruiz' document for Merida voyage N.° 10 consisting of stowage list, tally sheet, exception list and letter of guarantee, would like them to be marked for --- identification as plaintiff exhibit N.° 1 and bill of -- lading marked as plaintiff exhibit N.° 11.

Q Mr. Ruiz, do you have documents covering Campe che voyage N.° 113.

A Voyage N.° 113 and 110 or this voyage is not included?

Q Can I see the document for 113 please?

MR. MEEKER: Let the record indicate that Mr. Ruiz has produced a stowage list, exception list and a letter of guarantee from Mr. Baldomero Ruiz dated August 23/72 and ask that these documents be marked for identification as plaintiff exhibit N.° 12.

A Yes

Q I ask that this bill of lading we referred above to be marked as plaintiff exhibit for identification N.° 13.

MR. MEEKER: The letter of Baldomero Ruiz refers to - 3043 cartons whitch were stained. Is that correct? and - were those cartons shipped to Philadelphia? They refer to bill of lading N.° 1 Philadelphia.

A Yes.

Q Is it in writting?

A I do not know, It has been so many years I can not record.

Q Would you find out if it is in writting and if it is, send a copy to the master?

A Yes

Q In the period mentioned that we are aconcerned, - In May 1968, July/72 did you handled any cocoa - butter shipments from any other shipper?

A No, only for Industrializadora de Tabasco.

Q The period since August 1972, have you handled - any other shipments from other shipper?

A No.

Q In your agreement with Mexican Line, do they --- authorized you to issue clean bill of lading in ---- return for letter of guarantee?

A Yes, this has been for many years and has not been changed.

Q Have you know what is the average time the cocoa butter stays in pier to shipment aboard Mexican -- Line vessels?

A 8 to 10 days.

Q Do you act as agent for any other line than

Mexican Line?

A In the same traffic in other line. We are working for other lines.

Q Do you have the agreement with Baldomero Ruĭz - to issue clean bill of lading for letters of guarantee?

A No

Q I see that all of the letters of guarantee that are -- issued to you in return with the clean bill of lading the letters are dated much laier than the bill of -- lading.

A Yes sir, but was mentioned the date of the shipment.

Q Why would he gives you a letter of guarantee if the vessel have left unless you have an agreement.

A Standard proceedure in the Port of Coatzacoalcos.

MR. MEEKER: Let the record indicate that the copy of the letter of Baldomero Ruĭz dated June 20/72 covering bill of lading N.° 1 to Philadelphia for 48 cartons of cocoa butter has been produce and ask to be marked for identification included in plaintiff exhibit N.° 7.

Q Mr. Ruĭz, Is it true you said that there is no written agreement between Baldomero Ruĭs and Tomás Ruĭz Is there a verbal agreement of any kind between the 2 companies?

A Yes.

Q Would you tell me what this verbal agreement is?

A Tomás Ruíz as agent for Mexican Line and Baldomero Ruíz as costum broker for the shipper is that he is supposed to deliver the cargo along side the vessel and to pass on the - instructions for the bill of lading which is signed as the -- cargo is actually loaded. They are handled over to him, - and when clean bill of lading are required he is to produce a letter of guarantee to the Company.

Q Did you said the warehouse where the cocoa butter is stored is owned by the government?

A Yes sir, there are not privete warehouses.

Q Do you know who owns Mexican Line?

A Wh owns Mexican Line?

Q Is Mexican Line owned by Mexican Government?

A .....named for Transportación Meritima Mexicana in several office serviees. Transportación Maritima Mexicana is an interprice firm 70% private capital and 30% - Mexican Government.

Q What is tiie temperature reached in the warehouse in tlee summer time?

A Very warm, some days we get 40°C. and maybe more.

Q In the winter ttme what is the maximum temperature?

A We do not have winter or summer time. It is warm now. We use in offices air condition all yaar round. We are in a tropical country.

Q *But the warehouse is not air conditioned?*

A *No, it is not.*

MR. MEFKER: I have no more questions at this time, but reserves the right to ask further questions after crozz -- examination.

EXAMINATION BY:

MR. FALICK.

Q Mr. Ruiz, other than the documents presented, do you have any other documents refer to shipments - in question?

A Bill of lading and cargo.

Q Other than the bill of lading?

A No

Q Do you know if the stevedors prepare any other -- documents than the other presented today?

A All the documents presented by the stevedors union are - the invoices for the handling of the cargo.

Q The exception list, who prepares the exception -- list?

A Tomás Ruiz prepares it.

Q Whom at Tomás Ruiz prepares the exception list?

A We do not have a special man to do this work.

Q In voyage in May 18/68, how many people were -- named to prepare the exception list?

A I can not record, in 1968? is too much time.

Q Normally how many people work in the preparation of this list?

A 2 or 3 people are engaged in preparing an exception list -

Q Do you know if the stevedors also prepares any -- exception list or take exception orders of any kind?

A Yes, they do.

Q You do not have those record?

A No, we do not.

Q Mr. Ruiz, Do you know who gets the log?

A They are never handled but to the ship agent.

Q Do any of your records indicate what the itinerary for the voyage in question was?

A Yes, we have.

Q The July 19/72 would you tell me what the itinerary

A Yes, if I loock up for it.

MR. FALIC: Let the record show that the counsel of Mexican line has agreed to provide this information to the extent that it is available.

Q Any of the records provided today indicate the date that the vessel in question actually departed Coatzacoalcos.

A One or two days, that does not mean that the ship sailed - the same day,

Q Would there be any other record for you that have indicate that the vessel departured?

A Yes

Q What record would that be?

A It would be by the bill of lading and the deck log.

MR. FALICK: It has been stated that this information --- would be provided to the extent it is available.

Q The stevedors union is a private company or government company.

A It is a private cooperative.

Q How far from the warehouse is the deck to unload the cocoa butter.

A The trucks discharge the sacs at the warehouse and some times they discharge it on the door.

Q When the trucks arrive at the pier, is there a gate that the trucks has to go through?

A There are several gates and the warehouse man indicates the driver through which door the cargo will be discharged

Q When the trucks come in, is there a pass given - to the truck dirver?

A Pass?

Q Is any kind of record kept of the arrival of the trucks at the pier?

A No record.

Q How far from the warehouse is the ship side?

A Some times they have to move the cargo from the warehouse to any deck. It is not always.

Q Depends on what duck is used?

A Yes

Q How far is from the warehouse to the closed duck?

A You can get from 30 meters to 1500 meters.

Q Do any of your records indicate whitch duck in --- vessels in question left from?

A Yes

MR. FALICK: Let the record indicate the counsel has -- agreed to provide this information to the extent it is ---- available.

--- o O o ---

My name is MR. FREDERICK W. MEEKER, I am asso-- ciated with the Law Firm of HILL RIVKINS, CAREY LOES BERG. and O'BRIEN, Attorneys for Plaintiff ACLI INTER NATIONAL & GUILL & DUFFUS. The questions are in - connection with 8 voyages of Mexican Line vessels from- Coatzacoalcos to Philadelphia and New York between May 1968 and August 1972 carrying various cargos of cocoa - butter for my clients.

--- o O o ---

My name is PAUL FALICK, of the Law Firm BIGHAM, - ENGLAR, JONES & HOUSTON. 99 John Street, New York City. We represent Pittston Stevedoring Corp., The --- Third Party defendant in two of the Law Suits in question.

The questions whitch I have been asking will continue to - ask, involved information whitch we are attempting to ascertaing in connection with this Law Suits.

--- o O o ---

My name is MR. THOMAS F. MOLANPHY, I am asso-- ciated with the Law Firm HAIGHT GARDNER POOR & -- HAVENS and we represent Transportación Maritima Mexicana, S. A. the defendant and Third party Plaintiff in- connection with the claims in question.

--- o O o ---

Q Is it part of your job, is it not, to engaged the -- stevedors the unloading of this vessel?

A Yes

Q Did you give any instructions of any kind to the -- stevedors with regard to the handling and loading and stowage of the cargo in question?

A It is always reccommended to the stevedors in regard - with the nature of the cargo to handled same with most care in order to avoid any damage while been load in pier and stowage in the ships holls.

Q Other than handling with care, are there any --- special instructions given with regard with cocoa butter.

A No

Q Do you have anyone, person, to observe the load - of the vessel.

A Yes, we have one person by the agency or some times the chief of stevedors see that the cargo is been handled properly.

Q Is this chief stevedor am employee to you?

A Some times and some times we use somebody from out - side, but with the experience in this kind of work.

Q Does the chief stevedor keeps any record of the -- work and what he observes?

A Yes

Q And what do this record consist of?

A He gives a report if necessary or make any remark when he finds something wrong during the loading operation.

Q Do you keep these records?

A Yes

Q Do you have these reports here in the office?

A Yes

Q Would you tell me more about these reports and - what they consist of?

A The chief stevedore or superintendent keeps records of - the trucks, of all operations and reports all the necessary

information to elaborate a Port log and wh en required -- daily work reports the number of people working. Equipment use aside and on board, watches the correct stowage of the cargo, together with the vessel office and in general keeps track of all the loading and discharge operation while the ships are on Port.

MR. FALICK: Let the record show that I had been handled a copy of the Port Log for Merida 9. I would like to ..... covering the 8 voyages in question together with any daily work report if available.

Let the record show that counsel has agreed to provide -- the Port log and any other document available to the extent that are available. If ... when receive these documents - it has been agreed that these documents would be marked for identification as part defendant exhibit 1.

Q Mr. Ruiz, the Port logs do not indicate what ---- stevedor equipment was used in the loading?

A No

Q Do you have your own personal knowledge of what equipment is used by the stevedors in loading the cocoa butter?

A Yes, in nets.

Q Can you describe this equipment?

A The equipment used in loading the cargo from along side the vessel is with manila nets and wood platforms whitch are left in to the ships' holes and also by pallets cover - with nets in order to protect the cargo from fawling.

Q The equipment whitch you have described is equipment used in getting the cargo from the ships --- tackle to the vessel?

A Yes

Q Would you describe the equipment used in getting the cargo from the warehouse to ships' tackle?

A It is very similar; hard platforms with about 1 1/2 tons - capacity fill by a motor tractor. Several of this cars are full at a time.

Q How many cartons of cocoa butter can be carry on one of these tractors motors?

A 40

Q How are these cartons placed in the platform?

A By hand.

Q How many cartons are carry in each net when - - handled?

A 40

Q How high are they stocked in the net?

A Five

I want to make an statement. In the pier of Coatzacoalcos the Union of stevedors is a private union and they never -- allow any of their men to use hoocks in handling the cargo.

MR. FALICK: I will object to the statement is not been -- response to the question.

MR. MEEKER: Will joint in the objection.

MR. RUIZ: I also would like to mention that all the equipment is only owned by the Union of Stevedors.

Q Mr. Ruĭz, who decides when aboard the vesel --- where the cargo is stored?

A By the master or by the chief mate.

Q Then it is the dessition of the chief mate or master where to store the cocoa butter in question?

A Yes.

MR. FALICK: I do not have any further questions to make at this time.

MR. MOLANPHY: Let the record indicate the persuant to agreement of counsel the disposition of Mr. José Ruĭz is now been continue by Mr. Mario Ruĭz a personal in the - Company of Tomás Ruĭz, S. A. and who works with Mr. José Ruĭs during all the time of the shipments involved - in this act.

MR. MEEKER:

Mr. Ruĭz, for any special instruction received from In-- dustrializadora de Tabasco concerning special handling for this cargo.

A *Just not to load to high in a close place. That is right, nothing.*

Q *Did you have any verbal instruction?*

A *Nothing*

Q *Were part of the instructions not to store this - cargo in the tween deck?*

A *No there was no instructions.*

Q *At the warehouse in Coatzacoalcos for these shipments in question was there a time that the warehouse was full and the cocoa butter has to be ---- stored elsewhere?*

A *There is not other place. They have to stay in the duck - or to be stored in the warehouse.*

Q *If the warehouse is full the cargo remains in the duck?*

A *That is right.*

Q *Does that happens often?*

A *No*

Q *The records that Mr. Ruĭz produced from the files of Tomás Ruĭz, S. A. are these records kept in the normal course of .... by Tomás Ruĭz, S. A..?*

A *Yes.*

Q *Is there any other temporary instructions that is - used for the stowage of cocoa butter when the warehouse is full?*

A *I never hear of it.*

MR. MEEKER: I have no further questions.

30

MR. FALICK: At 2:00 p.m. the deposition was adjourned in the warehouse at the pier, and with all attorneys present there was an examination of cargo and equipment at the warehouse.

BY MR. HOLAHPHY:

Q Mr. Ruiz in what building are we now?

A Building # 2

Q At the pier at Coatzacoalcos?

A yes

Q Is this the warehouse that is used for the stowed of cartons of cocoa butter awaiting for export shipments?

A this warehouse is use for all kinds of cargos and there are other two warehouse numbers 3 and 4.

Q Those the cargo that you refer are including cargo of cocoa butter?

A Yes

Q Are these the cartons that we are standing near at this moment?

A Yes they are.

Q Were similar cartons of cocoa butter stored in the same warehouse between 1968 and 1972 for the shipments that we have been discussed?

A We say yes

Q And in the manner in which the cartons are stowed now, general, the same manner in which the cartons were stowed in the warehouse at the time of the shipments in question?

A yes

Q And do the cartons in the warehouse now, are they the same name as the shipper of the cartons of cocoa butter that wehave been discussed?

A Yes

Q I am now going to take some photographs.

BY MR. FALICK:

Q I notice that is a large open at the end of the warehouse can you tell me why is the open?

A Because we are going to build a new warehouse in the same place, because this is not good anymore.

BY MR. MEKER:

Q Mr. Ruiz about how many cartons of cocoa butter in this area roughly now?

A About 4,000

Q And when these cartons arrived? How long they have been here?

A We have to ask the warehouse man. The person in charge said they have been here since January 31st and February 3rd.

a Q So, only about a week

A Yes

Q When do you schedule to move them to the vessel?

A I think they were going to move them today, but I don't know.

BY MR. MOLANPHY:

Q Mr. Ruiz how many boxes high there are stack now?

A 8 high

Q Is there any reason that they don't stack higher?

A If they stack higher we have to pay different price, according to the stibadores prices.

Q Can you explain this tariff?

A At 1.75 mts. the normal tariff is pay, from 1.76 mts. to 3 mts. is 50% additional to the tariff rate and from 3.01 mts. are on 100% additional of the tariff rate.

Q Who pay the tariff rate

A The cargo is pay by the shipper

Q Is not pay by the carries

A No.

MR. FALICK: Let the records show that the Counsel for Third Pary Defendant has taken several photographs of the warehouse and cargo stowed within the warehouse, and Counsel for all Parties has stipulated that these photographs maybe mark for identification at the trial of this action, and that the Cocoa Butter in the photographs is the Cocoa Butter which Mr. Ruiz is referring to in this testimony at the warehouse today.

MR. HOLANPHY: Let the records indicate that we now back in the Agent office after have being on the pier and in the warehouse.

EXAMINATION BY

MR. HOLANPHY:

Q Mr. Ruiz in your experience as exporter in Coatzacoalcos do you have many reports for damage in cargo?

A No

Q What is your experience?

A Most of the time they don't report.

Q At the time 1968-1972 did Tomas Ruiz has anything to do with the trucks of Cocoa Butter from Cardenas to Coatzacoalcos

A No

Q At those times did Tomas Ruiz, S. A. has anything to do with the unloading of the trucks in Coatzacoalcos

A No

Q Did Tomas Ruiz, S. A. has anything to do with the storage of Cocoa Butter in the warehouse?

A No

Q Did Thomas Ruiz, S. A. has anything to do with the level of the Cocoa Butter storage in the warehouse

A No.

Q Are you familiar with the term in the ship tackle

A Yes

Q Tomas Ruiz has ever custody of this cargo himself?

A No

Q At the time of the shipments that we were taking about, hooks ever used by the longshoreman in Coatzacoalcos

A No, never

Q At the time of the shipments that we have being taking about can you explain in general what the Port Management was like in Coatzacoalcos?

A It used to call first Puerto Mexico and it was own by the Government and controlled by them.

Q Who owned and managed the pier at the time?

A The Government

Q And who owned the store facilities

A The Government

Q And these store facilities were on the Government control, is that right?

A Yes, it is right.

Q In the warehouse which we just left is there any temperature control?

A No

Q Was any phone at the time that we are taking about?

A No never has

Q Where the information comes from that indicate where the cargo was stowed aboard?

A from the master and chief

Q And that information is just prepare before or after the cargo is loaded?

A Is prepare at the beginning, but is always a change.

Q The information?

A Yes, is prepare by the chief or the master at the beginning of loading, sometimes there is a change.

Q Have you sent Cocoa Butter actually stowed in the vessels?

A Yes

Q Many times?

A Yes

Q What is the maximum high in number of cartons that you sent Cocoa Butter stowed?

A Maximum 20, between 15 and 20

Q And aboard the ships that we are taking about is possible to stow more high

A No

Q Why is that

A 8 " is 1.5 mts

" 10 " is 1.9 mts

" 30 " is 5.7 mts.

and the highest that the ship has is 5.25 mts. in the longhorn

Q Do the ship has compartments in the longhorn?

A Yes, and besides you have to take in consideration that each 3 or 4 tirs we put for ventilation so that means that increase the highest every 3 or 4 tirs goes that way.

Q Do you know about the approximate high tweendeck

A 2.3 mts.

Q Do you know how the exporterin Cardenas was advice of the ships arrival at the time of the shippers that we are taking about?

A No, I don't know. It could be some advice from the shipper or from our office.

Q At that time did Tomas Ruiz, S. A. has anything to do when the trucks were sent out from Cardenas

A No

Q At the time did you occasional saw the trucks arriving from Cardenas

A Yes

Q At what time of the day they arrived?

A Any time

Q In your experience in the steanship Agency business have you deal with many differents types of cargo shipped for export?

A yes

Q And in the course of your experience with these different types of cargo have you deal with differents type of containers?

A Yes

Q Are you familiar with the type of containers that was used for shipments in question of Cocoa Butter from Cardenas?

A Yes

Q In your opinion Mr. Ruiz were those cartons proper containers for export ship

A I don't think they were stowed firm

Q Are this opinion base

A yes

Q how many years is that

A 19 years.

I have no further questions.

EXAMINATION BY

MR. MEEKER:

Q Mr. Ruiz what types of products besides Cocoa Butter are shipped by Industrializadora de Tabasco?

A They have other kind of paste they call Cocoa Paste

Q ... Do they also export Cocoa paste

A Yes

Q and Cocoa liquor

A No

Q ... and cocoa butter

A yes

Q Do your mean in your testimony to Mr. Molanphy that you see that the trucks from Industrializadora de Cacao de Tabascoa S. A. to arrive any time

A yes

Q Some of these trucks perhaps carrying other thing

A Was Cocoa Butter, is because was Cocoa Butter in the trucks. They do not have other trucks that you guess what is inside.

Q ... When we were just at the pier there were some cartons, about 12,000 of Cocoa Butter in the warehouse

A Yes

Q How many of these cartons were obviously damaged

MR. MOLANPHY: I will object to the form of the question in the grounds that in the warehouse the cartons were in circunference.

MR. FALICK: I will object to the use of the term obviously and therefore join in Mr. Molanphy objection.

Q In the perimeter that we can see how many can you tell damage?

A Is very hard to say, I was not looking for it.

I have no further questions.

EXAMINATION BY

MR. FALICK:

Q Mr. Ruiz do any of the Mexican Line's vessels that get to Coatzacoalcos have refrigerator compartments?

A No

Q And do you know if Industrializadora de Cacao de Tabasco, S. A. ever requested refrigerator vessels.

A No, I don't know.

No further questions.

(Whereupon at 3:00 p.m. the examination wasadjourned).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

TRANSPORTACION MARITIMA MEXICANA,

Defendant and Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,

Third-Party Defendant.

Index No. 73 Civ 1297 HRT

NOTICE OF DEPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACLI INTERNATIONAL,

Plaintiff,

-against-

TRANSPORTACION MARITIMA MEXICANA, S. A.
dba, MEXICAN LINE and SMITH AND JOHNSON
(SHIPPING)INC.,

Defendants.

Index No. 73 Civ. 5341

NOTICE OF DEPOSITION

267

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

GILL & DUFFUS,

Plaintiff,

-against-

TRANSPORTACION MARITIMA MEXICANA, S. A.
dba MEXICAN LINE,

Defendant.

Index No.
69965/73

NOTICE OF
DEPOSITION

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

GILL & DUFFUS,

Plaintiff,

-against-

TRANSPORTACION MARITIMA MEXICANA, S. A.
dba MEXICAN LINE,

Defendant.

Index No.
69968/73

NOTICE OF
DEPOSITION

DEPOSITION of GERARDO SANCHEZ and JAIME ROSIQUE, held at the offices of Industrializador de Cacao de Tabasco, S. A. on February 5, 1974, at 10:30 a.m., pursuant to Notice dated January 15, 1974.

A P P E A R A N C E S :

MESSRS. HILL, RIVKINS, MC GOWAN & CAREY
Attorneys for Plaintiff
96 Fulton Street
New York, New York 10038
BY: FREDERICK W. MEEKER, ESQ.,
of Counsel.

MESSRS. BIGHAM, ENGLAR, JONES & HOUSTON
Attorneys for Third-Party Defendant
99 John Street
New York, New York 10038
BY: PAUL FALICK, ESQ.,
of Counsel.

MESSRS. HAIGHT GARDNER POOR & HAVENS
Attorneys for Defendant and
Third-Party Plaintiff
1 State Street Plaza
New York, New York
BY: THOMAS F. MOLANPHY, ESQ.,
of Counsel

MIGUEL ANGEL PEREZ REYES
Interpreter
Juan Alvarez 216 Altos
Villahermosa, TABASCO, MEXICO

oOo

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto through their respective counsel that sealing, certification and filing shall be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the questions, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the signing and sealing of said deposition is waived.

OoO

G E R A R D O S A N C H E Z S A N T A N A, having been first duly sworn by Margarita Gonzalez, testified as follows:

EXAMINATION BY

MR. MEEKER:

Q What is your name?

A Gerardo Sanchez Santana

Q Where do you live?

A Rio Seco Segunda Seccion, Municipio de Cardenas, Tabasco.

Q Where do you work?

A Industrializadora de Cacao de Tabasco, S. A.

Q How long have you been working?

A 4 or 5 years

Q Are you familiar with shipments of Cocoa Butter made in 1968?

A I was not employee in 1968.

Q Are you familiar with shipments made in 1972?

A Yes

Q Do you have records of shipments made in 1968?

A yes, I do.

Q We are concern today with 8 shipments in numerical order between May 18, 1968 to August 19, 1972.

A Yes, We have some records.

Q Do you have all the records of the shipments to ACLI.

MR. MEEKER: The witness indicated that they do not have records of the shipments of May 18, 1968 of 2,500 cartons, it is my intention to produce the plaintiff minus copy of the Bill of Lading.

MR. MOLANPHY: Let the records know the objection to any question and answer base upon request which are not in possession of the witness or his employee and which are pased only on records produced by Mr. Meeker.

MR. FALICK: Let the records also knows that third-party defendant has join the objection.

BY MR. MEEKER:

Q I show you a Mexican Line # 10 dated May 18, 1968 and Bill of Lading issued for 2,500 cartons of Cocoa Butter.

A yes.

Q Do you have an invoice for this shipment?

A Yes, they are looking for.

(Document referred to above is mark as Plaintiff Exhibit"A" for identification)

Q I show you FACTURA COMERCIAL of May 17, 1968 and ask you if this is acopy of the invoice of Industrializadora de Cacao de Tabasco, S. A. that we are taking about.

A Yes, this is a copy of the invoice .

Q Do you have a copy of the Bill of Lading and the invoice of the shipment made aboard the Campeche dated July 13, 1968.

(Documnnt referred to above is mark as Plaintiff Exhibit "B" for identification).

MR. MEEKER: Let the records indicate that the invoice for the shipment has been located in the witnesse's file.

Q I show you a list of the shipments between February 13, 1972 to August 19, 1972, and ask if you improduce the Bill of Lading and invoice for the shipments.

A Yes.

Then we have the list prepared by Mr. Meeker marked as Plaintiff Exhibit "C" for identification.

Q I show you invoice # 127 dated May 17, 1968 and ask if this is the invoice that covered the shipment made in May 18,1968 aboard the Campeche.

A Yes.

Q Do you have an invoice for the shipment made aboard the Campeche on July 13,1968?

(Document referred to above is mark as Plaintiff Exhibit "D" for identification).

Let the records indicate that in response to my request to produce the Bill of Lading that indicate in the list the witness has produce 2 bills of Lading and their invoices for February 13,1972. Bills of Lading # 9 and 10 and ask that they be marked for identification Plaintiff Exhibit as "E" & "F" and copies will be made and mail to our office. I also ask that the invoices for these shipments be marked as Plaintiff Exhibit as "G" & "H".

Q I show you for the July 13, 1968 shipment and ask if this is the copy of the invoice.

A Yes.

(Document referred to above is mark as Plaintiff Exhibit "I" for identification).

Q I show you Bill of Lading # 3 dated May 12, 1972 for 4,000 cartons of Cocoa Butter and Invoices # 970, 976, 969 and ask if this is the Bill of Lading and Invoices for the shipments in question.

A Yes.

MR. MEWER: I ask that the Bill of Lading 970, 976, 969 and Invoice be marked as Plaintiff Exhibit "J", "K", "L" and "M" for identification. For the records the Bill of Lading dated July 13, 1968 from the witness records and I ask to be marked for identification as Plaintiff Exhibit "N".

Q I show you Bill of Lading # 2 dated May 13, 1972 with 2,000 cartons of Cocoa Butter and the Invoice # 1035.

A Yes.

(Documents referred to above is mark as Plaintiff Exhibit "O" & "P" for identification).

Q I show you Bill of Lading # 1 issued in Merida on May 13, 1972 for 2, 000 cartons to Gill and Duffus and ask you if these documents represent the same shipments.

A Yes.

(Documents referred to above are mark as Plaintiff Exhibit "Q" & "R")

Q I show you Bill of Lading # 4 issued in Merida June 10, 1972 to ACLI well as the invoice # 1076 and ask if cover the sell of 3,000 cartons of Cocoa Butter.

A Yes.

(Documents referred to above are mark as Plaintiff Exhibit "S" & "T" for identification.

Q I show you Bill of Lading # 1 & 2 dated August 19, 1972 for 16,000 and 13,400 of Cocoa Butter shipped aboard the Campeche and Invoice # 1165 and ask if this cover 15,000 cartons of Cocoa Butter.

A Yes.

(Documents referred to above are mark as Plaintiff Exhibit "U", "V" & "W" for identification).

Q Do the amount of the cartons as indicate in the Bill of Lading you have produce were this amount actually shipped from this plant to the customer?

A Yes.

MR. FALICK: I will object to the form of the question because a close answer to the conclusion will happen receive by the customers.

BY MR. HOLAHAN:

Q Do you have any documents relating with these shipments?

A No.

Q Do you have any records concerning the condition of these shipments?

A No.

Q Do you have any records concerning the condition when these shipments left the plant?

A No.

Q Do you have any records showing when these shipments left the plant and were shi ped to Coatzacoalcos the

day and the time.

A Yes.

Q Do you have these records with you?

A Yes.

MR. MOLANPHY: The witness has attending at this time to look for the records requested and presenting to agreement of the Counsel here.

J A I M E R O S I Q U E having been second duly sworn by Margarita Gonzalez, testified as follows:

EXAMINATION BY

MR. MEEKER:

Q What is your name?

A Jaime R sique Priego

Q Where do you live?

A P. O. Box 12, Cardenas, Tabasco

Q Where do you work?

A Industrializadora de Cacao de Tabasco, S. A.

Q How long have you been working?

A 5 years

Q What position did you held before?

A Vice President of the Board of Industrializadora de Cacao de Tabasco, S. A.

Q Are you familiar with the shipments that we have discussed today from May 13, 1972 to August 13, 1972?

A I started working July 1, 1968. I was not here when they made the shipment in May 1968.

Q Where is the Cocoa Butter manufacture?

A Here in the factory.

Q Where do you get the beans?

A We get them from the Union, Union Nacional de Productores de Cacao.

Q What Geographical Area?

A Chiapas and Tabasco.

Q As a general rule how soon if the Cocoa Butter is produce is pack?

A Right away. We present the liquor in the press about 20 minutes, then the Cocoa Butter is filter and storage in tanks one hour later go to special machine and is temperate between 20o to 25 centigrades then is packing right away in plastic liners and cartoon boxes and we keep at the warehouse no more than 15 days. We send the merchandise to Coatzacoalcos no more than 36 hours before the ships arrive to the pier.

Q When the liquor is press the butter is in liquor?

A Yes.

Q Is the warehouse in good condition?

A Yes.

Q What is the maximum temperature in the warehouse?

A 25° centigrade.

Q When do the trucks load the merchandise?

A In the evenings between 5:00 or 6:00 p.m. and all night if is necessary.

Q Do the trucks only travel during darkness?

A Yes, only in darkness

MR. PALICK: Objection to the form of the question.

Q At what time of night do the trucks transport

the Cocoa Butter?

A Between 5:00 or 6:00 p.m. they load the trucks and leave the plant about 2:00 or 3:00 a.m.

Q How long is from here to Coatzacoalcos?

A 2 hours

Q When are the trucks unloaded in Coatzacoalcos?

A About 8:00 a.m.

Q Who unloaded the trucks?

A They have a Union

Q Who hire the people who unload the trucks?

A We do, Mr. Ruiz pay them and charge to us.

Q Do you have your own trucks to transport the Cocoa Butter?

A No.

Q Who normally does?

A freight trucks.

Q Do they issue truck's receipt from your Cocoa Butter when they load the trucks?

A Yes.

MR. HEEKER: Let the records indicate that Mr. Rosique showed the trucks receipts.

Q Is this book cover what period of time?

A 2 years.

Q So what for the shipments in 1972, the shipments that we are talking about the receipts would be in this book?

A Yes.

Q Do you have receipts for shipments made in 1968?

A No, we don't have books for 1968, at that time we had

different system, but we keep some records of the freight of that day.

Q Do you have some receipts for 1968.

A Yes

Q Can we get them today?

A Yes.

MR. [illegible]: The witness has produce a series of documents of a truck receipt and we will have the records indicate that he will produce the receipts for the varies shipments in suit and the receipts will be marked for identification as Plaintiff Exhibit "X-1" through "X- whatever number is needed. The witness also indicate he will locate the 1968 receipts and they will be similar in the numbers when receive for identification.

Q If a shipment is receive in damage condition the trucks indicate in the receipt that?

A Yes, they won't receive any box that is damage, we don't load the truck until the driver is there, he check everything.

Q If in Coatzacoalcos they receive any box that is damage they make you aware of that?

A Yes.

Q Do you found more damage with some ships than with others?

A Not to much difference

Q The Invoice that we are taking about that is about $ 60,000.00 were you aware of this claim?

A No.

Q Is Mr. Ruiz the agent for Mexican Line?

A Yes

Q Was he the Agent in 1968?

A Yes.

Q How do you know how long you have to keep the Cocoa Butter in the warehouse until the ship come in?

A Mr. Ruiz call me by phone.

Q And he tell you to get the Cocoa Butter to Coatzacoalcos?

A Yes

Q Why you don't send it to Coatzacoalcos?

A Because theyd don't have a good warehouse for the products.

Q And did you gave Mr. Ruiz special instructions about this?

A All the time we told them to get the cool place inside the boat. Mr. Ruiz said sometime he cannot get the cool place in the boat.

MR. MOLANPHY: Object to the answer as to what some one else told him.

Q When the ship leaves do you know?

A No.

Q How long this plant has ship with Mexican Line?

A All the time.

Q Do you get a dock receipt from Mexican Line?

A No.

MR. MEEKER: Let the records indicate that the witness said the Bill of Lading is the receipt that they get from Mexican Line.

Q Mr. Rosique I show you this box with plastic line can you identify it?

A Yes, this box is where we pack the cocoa butter.

MR. MEEKER: I would like the box mark as Plaintiff Exhibit "Y" and the lining mark as Plaintiff Exhibit "Z" for identification.

Q Mr. Rosique how is this plastic seal?

A We seal it with some special machine.

Q And when is seal, is seal with tape or glow

A No, is seal with some special machine that heat the plastic.

Q Does the heat affect the Cocoa Butter

A No

Q If the Cocoa Butter melt the cocoa butter come out of the pack

A Sometimes, the butter melt when is to hot. When we notice we change the plastic liner and the box.

MR. MEEKER: I don't have any more questions at this time.

EXAMINATION BY

MR. HOLMPHY:

Q There is a letter of guarantee indemnity issued by your Company in connection with any shipments that we are talking about?

A No, we don't write any kind of letters.

Q Do you have any direct dealing with Smith and Johnson in New York?

A No, the only time that we have any dealing with them is when we need any Bill of Lading for the Bank.

Mr. Ruiz is the only one that deal with them.

Q Can you tell me what means the name Baldomero Ruiz?

A The name of the Ship Agency at Coatzacoalcos is Tomas Ruiz, S. A. and Baldomero Ruiz is the Manager of this Company.

Q Do you receive copies of letters of guarantee issue by Baldomero Ruiz.

A Yes.

Q Do you receive copies of all such letters of guarantee issue by Baldomero Ruiz

A Yes

Q Do you have these letters in your possession now, sir?

A Yes.

Q Do you ever issue such letters to Tomas Ruiz?

A No.

Q Do anyone else send letter to Tomas Ruiz?

A No.

Q Do you have any letters regarding the shipments that we are taking about.

A No, I don't remember

Q Is there any difference in the quality of the Cocoa Butter that is ship from your plant?

A No, is the same.

Q Is there any test made?

A Yes.

Q What this test consist?

A We have a laboratory here, but I can't tell you right now what is the process that is made.

Q The warehouse is where from here?

MR. MOLANPHY: Witness indicate the building next door.

Q And there is where the Cocoa Butter is stow?

A Yes

Q The Cocoa Butter is pack by machine

A Yes

Q And then is stow in the warehouse

A Yes

Q How high they stow?

A 8 or 10 boxes

Q The cartons are stow one in top of the others?

A Yes

Q This is after they have been seal?

A Yes

Q This cartoon(exhibit "Y") is open in one end and when the Cocoa Butter is put in then is cover over?

A Yes

Q Is the Cocoa Butter hard when is put in?

A No, is semiliquid.

Q Is pour in?

A Yes

Q And then get hard?

A Yes

Q The boxes are stow on the floor?

A No, there are pallets.

MR. MCANTHY: Counsel agreed that the witness has answered yes, how many stow on each pallets, this can tell exactly.

Q 8 or 10 on one frame?

A Yes.

Q What is the weigh of each box when the cocoa butter is in?

A 50 pounds

Do your Company purchase the boxes?

A Yes

Q And the liners?

A Yes

Q Do you also ship cartoons of cocoa butter to other places in Mexico.

A Yes

Q Do you have customers in Mexico in addition of customers that you have in foreign countries?

A Yes

Q Do you have more customers in U.S.A. that you have in Mexico

A Yes

Q Do you ship in the same boxes to U.S.A. that you ship to Mexico

A Yes

Q Do you use special boxes for overseas shipments

A No, in Mexico we only have few customers.

Q This box who has been marked Exhibit "Y" has someinstructions on

A Yes

Q Can you read to me, please?

A Manteca de Cacao (Cocoa Butter)

Privilegio (is the trade mark)

Q I am pointing to some words in Spanish on the box and I ask you to translate these words in English.

A Estiba Maxima 30 cajas (Maximum stack 30 boxes), but we never stack more than 10 boxes.

Q Do you were using the same boxes in 1968

A Yes

Q And they also had the same instructions

A I don't remember

Q Do you know if there is any change in the box since 1968?

A No change

Q I am pointing to another group of words on the box and asking to write them in Spanish and translate in English

A Conservase en lugar fresco y seco (keep in fresh and dry place)

Q Other any instruction on the box which indicate at what temperature should be keep?

A No

Q Is there a termometer in the warehouse?

A Yes, only one

Q Is more than one door

A Yes

Q How many doors

A 3 doors

Q How many of these doors do you use?

A One

Q And the trucks actually goes inside the warehouse

A No, they stay outside

Q What is use in the warehouse to keep the temperature down

A Air conditioner

Q Do you know how large the warehouse is?

A 25 mts. large by 20mts. wide

Q Do you know approximately how many cubics meters there are in the building?

A 2,000 mts^3

Q Do you know the capacity of air condition units in the warehouse?

A no

Q Do you have any records

A Yes

Q Do you keep records dayli of the temperature in the warehouse

A No, we check every 2 or 3 days in order to keep the temperature between 18° and 21° centigrades.

Q Do you havd any records that show the capacity of the air conditioner in the warehouse?

A We don't have exactly the capacity for the warehouse but for the whole plant is 1 1/2 million of frigorias

Q How many meters does that unit cover

A 3,300 mts.²

Q Are all of those 1 1/2 million of frigorias maintain the same temperature?

A No, we have 400 mts² with temperature of 16° centigrades
200 mts² " " " 20° "
2000 " " " " 21° "
700 " " " " 22° "

Q Where is the thermometer in the warehouse located?

A there is no thermometer

Q How do you tell the temperature in the warehouse if you do not have thermometer

A We check through the temperature of the world, and the compressor has a thermometer for the cool water. The water has been by 9° all the time in order to keep the temperature between 20° and 21° centigrades in the warehouse.

Q Is the thermometer located on the compressor

A Yes

Q Where is the compressor and thermometer located?

A In the same building in the other side.

Q Do you ever have any problem with the working compressor

A No, because we have 3 compressor and we work one at the time.

Q and water circulate through pipes in the warehouse

A Yes

Q How high are the pipes in the warehouse

A to the ceiling

Q How high is the ceiling in the warehouse

A 4 mts.

Q They go along the ceiling or along the outside of the ceiling

A In the middle

Q Those the warehouse has a flat roof

A Yes

Q Did your Company instructed the manufacturer of the boxes (Exhibit "Y") to print the instruction not to stack more than 30 boxes high?

A No

Q Do you know who gave the instructions?

A No

Q Did your Company, tell the manufacturer of the boxes to print any other instructions outside of the box?

A Yes, only to keep in fresh and dry place.

Q Is this instruction always on the box?

A Yes

Q If the Cocoa Butter melt inside theplastic liner and later put in cool place, will the cocoa butter get cold again and with no damage

A No

Q There are times when the boxes become stain because the cocoa butter melt?

A Yes, sometimes

Q that cans that the bar has been broken

A It is possible.

Q Is there any way that the melted cocoa butter

can stain the box without the liner been broken?

A It is possible

Q Can you explain how that happen?

A It can happen if the box get stain by another box

Q It is the only way that can happen?

A Yes

Q Some way the liner has to be broken in order to be stain

A Yes

Q What happen if the boxes stay more than 10 high

A they get squash

Q that, cost pressure on the contains of the boxes

A Yes

Q will crush the boxes

A not exactly, but they will get squeeze

Q Does the pressure when the boxes get squeze create more heat

A No

Q there are times when your warehouse is full and you have to store boxes some where else?

A no.

Q who loads the cartoons on the trucks?

A the people from the Union

Q Are the trucks belong to the Union

A No, to different peoples

Q Are they employees of your Company

A Not exactly

Q What they use to load the cartoons on to the trucks

A hand cars

Q Do they use hooks?

A no

Q It is borbidding to use hooks

A Yes

Q Why?

A because they damage the boxes

Q So they do all by hands

A yes

Q Are these close or open trucks?

A Sometimes they are open or sometimes they are close.

Q What do they use to cover the trucks

A tarpaulin

Q How high they stack on the truck?

A 6 high

Q Is there any temperature control on the truck?

A No, absolutely no

Q Those your Company has any store facilities in Coatzacoalcos

A No

Q What store facilities do you use in Coatzacoalcos

A the same storage that we use for general merchandise

Q Is that in the open

A no, is in the cover

Q Do you use the same facilities in 1968

A Yes

Q Is there any temperature control in the store facilities at Coatzacoalcos

A No

Q even since 1968 has ever been temperature control of the store facilities in Coatzaccalcos

A No

Q How high the temperature get in the store facilities in the summer time?

A 40° centigrades

MR. MEEKER: I will object to the form of the question.

Q How high is the temperature get in these facilities in the winter time?

A 24° or 25° centigrades

MR. MEEKER: I will object to the form of the question

Q Your cargo stay in these facilities for 24 or 36 hours before been left on the ship?

A yes

Q Ocassionally is little more?

A Yes

Q When these cartoons are unloaded from the trucks how high are they stack there?

A they stack by 8 or 10 no more than that

Q Did your Company ever ship cartoons of Cocoa Butter in refrigerator compartment aboard ship?

A yes

Q when do you do that?

A I don't remember exactly the day but we sent in a Holland Line because they have the refrigerator compartment

Q Do your Company requested that your cargo be stored in refrigerator consignment in the Holland ship

A yes

Q Do they cost more?

A I can't tell because we do not pay the freight

Q Do you receive any special instruction from the customer

A no

Q who gave the instruction on the Holland Line to put the cargo in the refrigerator compartment

A Mr. Ruiz told me that was going to be better to put in refrigerator compartment

Q Do you know what Company manufacturer these boxes

A Empaques y Carton Corrugado de Mexico, S. A.

Q Do your recors indicate whether or there is pay in full for each of the shipments that we have been taking about today?

A Yes

Q Do the men who unloaded the trucks use hooks?

A no

Q It is all done by hands?

A yes

Q Do the trucks receipts that you show before indicate any occasion when the trucks took exception of any damage

A no

Q have you ever have receint or truck receipts

when the trucks took exception of any damage.

A no

Q Haveyou ever have receipt or truck receipts which has notation for damage

A no

Q If there is any damage found it will be record of that anywhere?

A no, when the truck get to Coatzacoalcos the people from there call us if they found some damage, then when the trucks people comeback to get the money we deduct the amount of the damage boxes.

Q How much did these boxes cost?

A $ 4.40 empty with the liner

Q As there othertimes when the trucks refuse to accept boxes from you?

A If they are in bad condition we change them.

Q Is there any records

A No, the only records we keep is when we have to throw away the empty boxes.

Q Do you have any records made for the boxes that you throw away

A Yes

Q Before they even leave the plant?

A Yes, we have to watch how many damage boxes they change before they leave the plant.

Q Special in the summer time

A Yes

Q What happen to the boxes, some of they get squeeze?

A yes

Q this happen before leaves the warehouse

A Sometimes

Q How many men load the trucks

A about 10

Q Some of them get on the truck

A Yes

Q Is the floor in the warehouse at the same level as the truck

A Yes

Q the hand cars are driven into the trucks

A No, only until the doors

Q One man handle one box

A yes

Q Do you issued any special instructions for the handling of your cargo as it is loaded aboard the ship

A yes

Q and waht are these instructions?

A to put in cool place, to handle with care, to put the boxes in some special pallets when they pick them up to avoid to fall down, and we have told them to put a tarpaulin around the pallets to cover the boxes because the movement drop them.

When they unloaded the trucks we all the time recomended to get the coolest place, because some times the warehouse is very hot.

Most of the time we send somebody from here to see the condition of the cargo, and when the cargo stay in more than 8 days we send empty boxes with one of our man to check and if he see some of them are in bad condition he change the box.

Q As long as the line is not broken can you change the box very easy?

A Yes

Q what cost the line to broke

A sometimes the heat and sometimes the people drop the boxes.

Q Did your Company issue these instructions in 1970?

A no, in 1967. When the Company sent the first cargo they send some peoples to watch the load and then they made the instructions

Q Do you know how long this Company has been shipping Cocoa Butter for export?

A from 1967.

Q Has anybody ever suggested to use a different kind of boxes.

A no

MR. MCLAUGHLIN: Idon't have any more questions.

EXAMINATION BY

MR. FALICK:

Q You said the cocoa butter do not stay in the warehouse more than 15 days.

A yes

Q Why is the reason for that

A Because we sell the merchandise before we start the production. When we have 2 or 3,000 boxes we start sending to Coatzacoalcos we know that in Coatzacoalcos we have ships every 8 days to go to U. S. A. If we don't do that we have to much problem storage the merchandise and we made arrangements to send whatever we have ready.

Q What do you mean by problems

A like the butter start melting or another thing is that as soon as we send the butter we get the money.

Q Do you send the trucks to Coatzacoalcos about 3:00 p.m.

A no, we start at 5:00 p.m. and they leave about 2:00 or 3:00 a.m.

Q now, if the shipments were in the daytime will be dangerous?

A Yes, only when we have cool weather is ok

Q If there were not cool weather willbe dangerous 2 hours to Coatzacoalcos

A no

Q Why then you shipped during the night?

A If the trucks arrived in Coatzacoalcos after 3:00 p.m. the trucks have to be there until next day.

Q Why is that?

A Because the Union do not work after 3:00 p.m.

Q Have this ever happen to you?

A No, but if that happen we have to pay extra

Q By what time the trucks have to arrived to Coatzacoalcos and then you don't have to pay extra?

A Between 8:00 a.m. to 3:00 p.m.

Q What happen after 3:00 p.m.

A We have to pay extra

Q Have you ever pay extra

A Sometimes

Q Have any of your records show wheter you pay

extra in regard to the shipments that we are concerning today?

A I cannot tell you exactly

Q How many of this cartoons do these trucks carry

A 400 but varies

Q Ar they fill to capacity

A Yes

Q who gave the decision of how many goes on each truck?

A We do

Q I believe you stated that as long as the liner have not broken the cocoa butter can be re-pack in other cartoon?

A Yes

Q It is possible that even if the liner has not been broken that the cocoa butter may have began to melt?

A Yes, it is possible

Q Do you statedthat some of the trucks are not close?

A yes

Q and alşo that the open trucks has a tarpaulin

A Yes

Q How does tha tarpauling cover the product of cocoa butter

A the tarpaulin do not permit the sun to get to the boxes, all the time we recommend to leave the front of the trucks open to get the air in. If start raining they can cover it right away. And we check all the time with the driver to keep the front o en to let the cool air come in.

Q the tarmaulin protect the cocoa butter from

the sun?

A yes

Q If the sun is shiny it is possible that will be enough heat to melt the cocoa butter

A yes

Q Have you ever have your cartoons below boilers?

A No

Q Before you described your store facilities in Coatzacoalcos and you stated that the temperature in the summer is 40° centigrades

A Yes

Q Have you ever been there?

A Yes

Q Are they cover or uncover

A cover

Q That is the warehouse made of

A Asbesto (cement)

Q Is a thermomether kept in the warehouse at Coatzacoalcos

A No.

MR. FALICK: I don't have any more questions.

DIRECT EXAMINATION BY

MR. HUMMER:

Q Who owns the warehouse in Coatzacoalcos

A The Government

Q Y show you exhibit "Y" and ask you if the word "FRESCO" means also cool

A Yes.

BY MR. MOLANPHY:

Q What does your Company do with the Bill of Lading after you get them

A The original goes to the Bank and we keep the copy

Q And what other Company has also shipped Cocoa butter for export

A National Union. Before we were the only ones, but in 1972 the Union started shipping.

Q While your Company still shipping cocoa butter before the Government took over after 1972, what other Companies shipped Cocoa Butter for export?

A "Soconusco"in Mexico City and"ACRA"in Mexico City

Q Do you know what Soconusco shipped from?

A Nuevo Laredo, TAMAULIPAS

Q Do you know if either of these Companies shipped by water?

A no

Q As far as you know this is the only Company that shipped by water

A yes.

MR. MOLANPHY: I have no further questions.

MR. MEEKER: I have nothing further

MR. FALICK: I have no further questions either.

(Whereupon, at 4:00 p.m. the examination was adjourned).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

ACLI INTERNATIONAL, INC.,

Plaintiff,

-against-

S.S. CAMPECHE, her engines, boilers, etc., TRANSPORTACION MARITIMA MEXICANA, S.A., d/b/a MEXICAN LINE,

73 Civ. 1297

Defendants.

- X

TRANSPORTACION MARITIME MEXICANA S.A.,

Defendant and Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORPORATION,

Third Party Defendant.

- X

ACLI INTERNATIONAL, INC.,

Plaintiff,

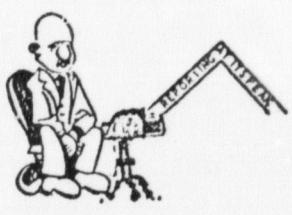
-against-

73 Civ. 5341

TRANSPORTACION MARITIMA MEXICANA S.A., d/b/a MEXICAN LINE and SMITH AND JOHNSON (SHIPPING), INC.,

Defendants.

- X



Apex
Reporting Company
45 JOHN STREET
NEW YORK, N. Y. 10038
233-3530

July 23, 1974
2:30 P.M.

96 Fulton Street
New York, New York

DEPOSITION of RUBEN VILLEGAS, a witness appearing on behalf of the Defendants herein, taken pursuant to notice dated June 19, 1974.

* * *

APPEARANCES:

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New York, New York
BY: NICHOLAS CAMERA, Esq., of Counsel

* * *

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, that objections

to any question, except as to the form of the question, are reserved for the trial of this action.

IT IS FURTHER STIPULATED AND AGREED, that this deposition may be sworn to by the witness being examined, before a notary public other than the notary public before whom this examination was begun.

IT IS FURTHER STIPULATED AND AGREED, that the filing and certification of the original of this deposition is waived.

* * *

RUBEN VILLEGAS, having first been duly sworn before a notary public of the State of New York, hereby testified as follows:

EXAMINATION BY MR. MEEKER:

Q Would you state your name and address for the record, please?

A Yes. Ruben Villegas Dominguez, Altamirano 585, Vera Cruz, Mexico.

Q Captain, could you state by whom you are employed at the present time?

A (No response.)

Q Whom do you work for now?

A Well, I work right now for Nautical Merchants School in Vera Cruz.

Q Before you were employed by the school where did you work?

A I work for Transportacion Maritima Mexicana on board the merchant vessel, PUEBLA.

Q In what capacity; what was your job on the PUEBLA?

A I was chief mate on board the PUEBLA.

Q What vessel were you employed on prior to the PUEBLA?

A Well, I was working in another company on board Mexican ship, freon, and before on another ship.

Q For whom were you employed in July and August of 1968?

A For TMM, Transportacion Maritima Mexicana.

Q In what capacity?

A Well, I was chief mate on board the CAMPECHE motor vessel.

Q You were chief officer, you say?

A Yes.

Q What licenses do you hold?

A Well, I have a captain's license from the Mexican government. That means I can be captain on board of any ship, any ton, any part of the world, according with the Mexican regulations.

Q When was the license issued?

A The master's license was issued, this is the last one I had, and this is from '61 (indicating).

MR. MEEKER: Let the record indicate that Captain Villegas has shown two reduced documents purporting to be licenses issued by the Government of Mexico, the first one dated the 1st of December, 1969, and the second issued the 24th of November, 1961. The license is for master in the Mexican Merchant Marines. Let the record show I am handing it back to the witness.

Q How long had you served as chief mate on board the CAMPECHE in July of --

A (Interrupting) I don't remember too well, because I was on board CAMPECHE three times, being the chief mate different times. One of them

was in July of 1968.

Q Were these three times two other times prior to 1968 or after 1968?

A I don't remember -- after '68, I guess, after '68, if I remember well.

Q When did you come aboard the CAMPECHE in 1968 to become chief officer?

A Well, I don't remember just when.

Q Were you chief officer in May of 1968?

A No. I was in that company. I was chief officer on another ship and they gave me the command of one ship, and they went to vacation -- I mean, they give me the command of one ship. They change it to the command of another ship and then I went to vacation. And then, after vacation, I went to the CAMPECHE.

Q Would you give us a rough approximation as to when?

A I think I was chief mate before then, July, '68. I don't remember.

Q Maybe we can tell by this: did you come aboard, where did you go aboard the vessel?

A In Vera Cruz.

Q In Vera Cruz?

A Yes.

Q Would you have logs which would indicate when you came aboard the vessel in 1968?

A Well, not here. Not here. I have no logs right now. See, I remember the name of the first captain when I met on the CAMPECHE the first time I was the chief mate, and it is different in the second time, understand? I mean, when I went to CAMPECHE the first time was Captain Ferrer, and when I went the second time it was another captain, Cervera. And another time was Captain Gonzales. That is what I remember. I don't remember the dates.

Q Captain, could you tell us when you first started to go to sea?

A The first time I went to sea?

Q Yes, as a mariner.

A A long time ago. It was '52, something like that.

Q How old were you in 1952?

A Around nineteen.

Q Captain, prior to the July voyage of the CAMPECHE in 1968, had you, I believe you stated

you were the chief mate aboard another vessel of the Mexican Line, is that right?

A Yes. In Mexican Merchant Marine I was chief mate, second mate, third mate and captain too.

Q Had you ever transported cocoa butter before July of '68?

A Before, well, I don't think so.

Q In other words, this was your first --

A No. I think, but I can't, I can't swear it. I think this was the first time.

Q Had you had any instructions from Mexican Line, TMM, on special cargoes of cocoa butter?

A Well, no, no special instruction. That cargo came to the ship in a normal cargo list, but they have no any special instruction, you know. When you load some cargo with special cargo they put label, they put dangerous cargo. They tell you something about the cargo, see. No special. In other words, I don't, I don't know that time any special regulation about that cargo.

Q Were there any instructions that you received from Mexican Line about where to stow

the cargo or how to stow it, how to dunnage the cargo, how to ventilate the cargo?

MR. MOLANPHY: Which cargo are we talking about?

MR. MEEKER: Cocoa butter.

A Well, no. Normally they don't send, they don't send special instruction. Only, of course, if you load silver, if you load gold or something like that, or guns or something, and any, have really special cargo, refrigerated cargo or dangerous cargo, dynamite, TNT.

Q This you would just carry then as general cargo?

A General cargo.

Q Do you usually, I know, Captain, I have you at a disadvantage because you don't have the log for this voyage --

A (Interrupting) Yes.

Q (Continuing) But do you recall anything specific about the loading of this cocoa butter or the stowage of this cocoa butter?

A Yes, yes, I remember.

Q All right.

A See, I remember there was damage.

That is the reason I remember. If you have a regular trip with no damage, with no bad weather, you don't remember too much, but if you have something special, you remember something special. I remember we load at that time cocoa butter, cocoa butter in #1 lower hold. And I remember and was on top of one tier of drums. I remember it was green, green colored drum with essential lemon oil. That drum was loaded at Vera Cruz before Coatzacoalcos, and I remember we load that cargo, I think that was the bigger part, in that space, and another part in the #4 tween deck. Yes, #4 tween deck.

Q So you loaded in the #1 lower hold aft?

A Aft.

Q And the #4 tween deck?

A Yes.

Q You mentioned there were drums of essential oil loaded also?

A No, was, it was, what do you call that, the floor of the #1 hatch was, the first tier was essential lemon oil, and on top of that we put the cocoa butter.

Q Do you recall how many cartons of

cocoa butter went into the #1 lower hold?

A How many cargo of which?

Q Of cocoa butter.

A How much less or more?

Q Yes, roughly.

A Well, I can't tell the amount because we don't use checkers. No, I can't tell you exactly the amount. It is very difficult for me.

Q How tall were the drums of essential lemon oil?

A It was regular tall, I mean regular size.

Q They were regular 55 gallon drums?

A Well, let me tell you in kilos, 200 litos.

Q 200 litos?

A Like this (indicating).

MR. MEEKER: Let the record show that the witness has indicated a height of approximately four feet, something like that.

MR. MOLANPHY: Three and a half, four feet.

MR. MEEKER: And a diameter of

about a foot and a half, two feet.

MR. MOLANPHY: Two feet.

THE WITNESS: Normal drums.

Q Normal drums?

A They are small size, like this (indicating), and another bigger, this high, that is (indicating).

Q But 200 liters?

A Yes.

MR. MEEKER: Off the record.

(Off the record discussion.)

Q Captain, what was the space or the height of the lower hold from the floor to the ceiling?

MR. MOLANPHY: Counselor, can we have the captain refer to the capacity plan of the ship?

Q Be my guest. I wonder if we can mark the capacity plan as Plaintiff's Exhibit 1 for Identification.

(Whereupon, the above mentioned document was so marked as Plaintiff's Exhibit 1 for Identification, this date.)

MR. MOLANPHY: Captain, can you

tell us what this document is?

THE WITNESS: That is a capacity plan.

MR. MOLANPHY: Of what?

THE WITNESS: Of the ship.

MR. MOLANPHY: Does that show the general arrangement of that ship as it existed in the summer of 1968?

THE WITNESS: That's right.

Q Captain, could you indicate or could you tell from this plan the height of the #1 lower hold from the floor to the ceiling?

A Well, as I remember, this is a copy, 200 to 1 scale. I don't remember just exactly what the height here is.

Q Could you give us a rough approximation, you know, more or less?

A Well, taking a measure here with no ruler --

MR. MEEKER: Off the record.

(Off the record discussion.)

MR. MEEKER: Let the record indicate that the captain is measuring off the height of the lower hold with a ruler that I supplied.

A Well, it is no regular. It is no regular.

Q Could you give us the high point and low point?

A Okay -- what?

Q Could you give us the high point and the low point?

A It was, the after section of the lower hold, after section measure, it is five meters, and the lower of the after and almost the same, five-ten, five-twenty.

Q Captain, could you --

MR. MOLANPHY: Is that on the idea that the scale is 200 to 1?

THE WITNESS: Well, I can check it. Say margin 14.[illegible] meter m-a-n-g-o. That is the easy way you can do it. It is seven centimeter, one centimeter, and here it says mango 14.32 meter.

Q So then if 200 --

A (Interrupting) Yes, that is identify the scale here as one to two hundred.

Q So that the height of the hold would be five meters from the floor to the ceiling, roughly?

A Yes.

Q This lemon oil that was on the first tier of the cargo space --

A (Interrupting) That was just in the floor of the hatch.

Q That was only one high?

A Well, I don't remember clearly, but I think it was only one high.

Q Could it have been two high?

A I don't remember. This is around five years ago, little bit more.

Q Was there anything stowed between the tops of the drums and the lower level of the cocoa butter?

A Well, we put dunnage.

Q What did the dunnage consist of?

A It is wood pieces and in different lengths and something like that (indicating).

Q Indicating about an inch and a half, two inches thick?

MR. MOLANPHY: About eight inches wide.

A Something like that. Eight inches wide and different length.

Q Do you recall how high the cocoa butter, how many cartons of cocoa butter were stacked?

A Well, I can't remember just exactly how many, see, but I remember we don't put the cargo through the hold and we don't carry the cargo to the ceiling, leave a space, because there the beams and the frames and can tell you something about that.

Normally every trip in Vera Cruz on this ship, when I was chief mate, we check it, the bottoms of all the hatches. I can tell you right now that in the #1 lower hold we had no less than ninety per cent of the battens.

Q When you use the word, battens --

MR. MOLANPHY: Off the record.

(Off the record discussion.)

A I think between the hull and the cargo there was no less than nine inches; and I think we leave about two feet or something like that.

Q Two feet between the top of the cargo and the ceiling of the hull?

A Something like that, because to load, you know, you must carry. It is difficult to do that.

Q In other words, are you saying that these --

A (Interrupting) Normally they, any longshoreman or any place you load, you lose the top space of the cargo.

Q In other words, you would have to have a crawl space for the longshoremen to get through?

A A crawl space, something like that.

Q Do you recall how this cargo was loaded, Captain?

A How?

Q Yes. Do you recall the actual loading of the cargo at Coatzacoalcos of the cocoa butter; in other words, do you remember the cargo coming on board the CAMPECHE?

A Yes.

Q I assume you remember it being discharged. I was wondering whether you remember it coming on board; do you remember that?

A Yes. The people from Coatzacoalcos use something like a net, put the carton and hook it and bring it. They handle by hand, put every carton, and according with the order we get, they

put the dunnage so high (indicating), something like that. They put the dunnage, and then they load. If you have the after end or if you have the forward end working in one half and you are working on the forward part of the ship, the after part of the ship, that is a, you do for take level on the cargo, and if you see the cargo is too small you put dunnage across, put more cargo on top. That is normal.

Q So at what level of the cocoa are you saying that you put dunnage?

A In between the cargo.

Q Are you talking about in between the lemon oil cargo?

A Yes, that is the first.

Q You would put more dunnage as you went up further?

A You know, if you have drums -- right.

Q Like this (indicating), and this oil --

MR. MEEKER: Indicating with asktrays.

A And this, another, you have got the floor, then you put the dunnage here, okay.

Q I understand that.

A But this is different than I am telling you, but you go high, you put tier, another tier, another tier, another tier (indicating), and at the suppose five, six, eight tiers you have not the same level. Okay, you can then put the dunnage and go through.

Q So the fifth or sixth level you put more dunnage?

A Less, more.

Q That is the fifth or sixth or seventh?

A Five, six, seven, eight. Normally you have no sufficient officers to be checking them. They put just exactly the cargo. Anyway, the longshoremen don't do it just exactly the same.

Q Do you have any instructions as to how high to stack the boxes of cocoa butter; did you?

A First thing, boxes, it wasn't boxes. No wood boxes. It was carton.

Q Well.

A No, I had no special instructions.

Q Do you remember writing on the boxes or writing on the cargo?

A No, I cannot be certain I remember

any writing on the carton.

Q While we have the plan out, Captain, I wonder if you can tell us the height of the #4 tween deck from ceiling to floor?

A #4?

Q I believe you testified that is where it was stowed.

A The #4 tween deck.

Q Yes, please.

A From the ceiling to the floor of the tween deck or the floor of the hatch.

Q No, of the tween deck.

A Only on the tween deck?

Q Yes.

A Three meters and -- three centimeters, 3.6 meters.

Q Do you recall, Captain, whether there was any other cargo other than the cocoa butter stowed in the #4 tween deck?

A No, I don't remember. I don't remember any other cargo that was under this cargo or above this cargo in the tween deck.

Q You don't remember that there was any?

A No.

Q Or you don't remember if there was any?

A No, I don't remember if we had other cargo there. Just on top of the butter or under the butter --

Q All you remember is the butter?

A Yes.

Q Getting back to how much cargo was stowed in each cargo area, would you say that it was roughly half the cocoa butter stowed in the #1 lower hold and half in the tween deck, or would it be one-third in the tween deck, three-quarters in the lower hold, or one-third in the lower hold and --

A Well, I can't tell you the exact amount, but I think it was more in the #1 lower hold, I think, than the #4 tween deck.

Q You stated that you did recall something about the loading of the vessel. Do you recall the stevedores using any hooks?

A No. In Coatzacoalcos, no.

Q They don't use hooks in Coatzacoalcos?

A No, no for cartons.

Q Did they use hooks in Coatzacoalcos

for other things?

A Well, sometimes.

Q Captain, do you know the melting point of cocoa butter?

A No exactly.

Q Now we are in a little difficulty because we don't have with us the log for this voyage, but do you recall if temperatures were taken of the holds, the cargo holds, during this voyage?

A No, I can't tell you we didn't take the temperature. I cannot tell you that we did not take the temperature.

Q Captain, could you tell us of your own knowledge, if you remember, if you can, if you ran into any rough weather on the voyage from Coatzacoalcos to New York on the voyage we are talking about?

A Well, I don't remember rough weather, really. I remember we had some fog before arrival in New York.

Q But that was about the extent of the --

A (Interrupting) Yes.

Q No heavy seas?

A No.

Q You didn't take the temperature, there wasn't any, you didn't take the dew point of the various holds?

A No, no on that case.

Q Do you remember any special ventilation problem that you had during this voyage?

A (No response.)

Q In other words --

A (Interrupting) Any --

Q Did you ventilate this cargo on the way up or --

A (Interrupting) Well, see, normally we ventilate the cargo according with some rules, but if you can go to the hatch and take temperature, the wet bulb or dry bulb, you can have the dew point then by experience. You must have your mind. If you have humidity, less or more, and you keep, the main rule then is to keep as cold and as dry air as you can find in the hatch, keep it, that is, we do it. And if we ventilate, we put it in the bg, normally all the Mexican ships.

Q So if you do ventilate, it should be in the log?

A I think.

Q Do you recall ventilating on this voyage?

A Yes, I think we ventilate, but I don't, can't tell you just exactly the time.

Q But you have also said, I think, in answer to the last question, that you would go down with a wet bulb and dry bulb to determine whether ventilation was necessary?

A What, right now there is one thing I must tell you. Right now I am teaching in the Mexican Nautical Merchant School just about that one, one of the areas I talk is the cargo.

Q In other words, are you saying that on this voyage that one man would go down and take a wet bulb reading and a dry bulb reading?

A Nobody went down and took the temperature, nobody.

Q Nobody?

A Nobody. I am complete sure that nobody went down and took it.

Q You say you are talking now, that is what should be done?

A Yes. I am teaching right now to the

people, and I must tell the rules to them. okay.

Q Okay.

A Yes, you know, there is for writing, but the main thing we must look for in a hatch is as cold and as dry air as you can find or you can keep in the hatch. That is the best you can do. For, how do you call it --

Q Sweat?

A Drops of water.

Q Sweat?

A Sweat for condensation.

Q Do you know the temperature, I don't know what it is in Spanish, Captain, ample air?

A Air -- it is right on the paper -- no, I don't know what this means.

Q Would you know what the stowage factor of the cocoa butter was?

A Before loading or now?

Q Well, of this particular cargo, of these 50 pound cartons.

A Well, I don't remember it. I don't remember it. And, you know, we received some cargo list.

Q Yes.

A And in some places the agent give you the cargo and cubic space for using, and in other places they give you the cargo and the factor, and in other place they give you the cargo and the weight, and that's all.

Q Captain, do you recall whether the temperature - again we are, because of the absence of the log I might be putting you on the spot, but do you recall any extreme temperatures that you had encountered between the time you loaded and the time you discharged in New York?

A Well, I think it was like now. I think it was like now.

Q Like now outside?

A Yes, something like that.

MR. MEEKER: Can we stipulate that it is about 75 degrees out?

MR. MOLANPHY: I suppose it is about that.

A Between 29, 27, 28.

Q That is centigrade now?

A Yes.

MR. MOLANPHY: Where was this now, in 1968 at the time it was loaded or at the

time it was discharged?

A Well, less or more, it was in the same -- see, before we arrived in New York there was fog, and right after the fog goes was sunshine, it is warming up. But I can't tell you just exactly how much degrees.

Q Can you say that the average during the entire trip was 27 to 29 centigrade?

A I can say.

Q Captain, were you aware of any claims on the cocoa butter discharges of prior voyages of the CAMPECHE or any other Mexican vessel?

A At that time?

Q Yes, anything before that that you were aware of, any claim?

A July.

Q Before.

A What do you mean, where?

Q Do you know of any claim on cocoa butter?

A No.

Q You don't know of anything?

A No.

Q Do you recall the discharge of this

cargo, Captain?

A Yes.

Q Can you tell us about it?

A Well, the first day we was here in New York we didn't discharge from New York 1 lower hold. The second day we start discharging in that hold, and when we start nothing happen. It was normal. But sometime after they started the cargo was damaged, was coming out damaged, and on top of the drums, I was telling you before, was cocoa butter, was hard, and how do you call it, together with the drums, all the cargo was (indicating).

Q Crushed?

A Yes. And they were on the floor of the hold, more than one foot of butter. I suppose it was melted and hard again.

Q In other words, it was hardened on the floor and on the drums?

A Yes, around the drums and on top of the drums and on the side of the drums.

Q Who discharged the cargo, Captain?

A The longshoremen here.

Q Did you notice any use of hooks in discharging?

A Well, no, I don't remember using hooks, no. Normally when I am on watch I must keep, you know, every hatch is, if you have six gangs working you have six hatches. Then you go across the deck. You put one new book here in the pocket and you writing everything you see, every time it happen.

Q Yes.

A See.

Q You wouldn't happen to have that notebook with you today, would you?

A (No response.)

Q Would you have that book with you, Captain?

A Right now?

Q Yes.

A No, I don't have it.

Q Do you recall, I believe you were talking about melted cocoa butter in the #1 lower hold?

A Yes.

Q Am I right?

A Yes.

Q Do you recall any damage from the #4

tween deck?

A No.

Q There was no damage out of the #4 tween deck?

A Well, I don't recall. I don't remember. As for the #1 lower hold, I remember because it was very, very special damage.

Q Do you recall, in loading, whether the cartons appeared to be damaged to you? In other words, in Coatzacoalcos were the cartons damaged when you loaded them aboard?

A Well, no.

Q Did you come to any conclusion yourself as to why the cocoa butter melted in the #1 rather badly but apparently didn't in the #4?

A Well, I suppose, maybe, suppose in the morning you have, suppose 20 degrees in the morning.

Q In the morning?

A 8:00 o'clock.

Q Are you talking about here, New York?

A Yes. And according with the day at noon, 29. At 2:00 o'clock we have 30. Then in the afternoon you follow with, suppose afternoon start

raining and rain all the afternoon from 2:00 o'clock to 5:00, something like that. And then in the night the sky clear again, and during the night comes warm again, and in the midnight you can have again 30 degrees or something like that. And early in the morning, like 2:00, 3:00, 4:00 o'clock, it rain again and the weather come cold again, and like that, you know. It could very well happen, you know. It can happen. I think maybe it was some change, this temperature.

Q But if there was a change in the temperature, wouldn't it affect the #4 tween deck as well as the #1 lower hold?

A Well, I think because the weight cause, the weight of the cargo.

Q The weight of the cargo?

A Yes, that's what I think.

Q In other words, the cargo was heavier in the #4 than the #1?

A No. You know that.

Q What?

A No.

Q When did you become aware, Captain, of the claim or the damage to the cocoa butter?

A When I knew?

Q Yes.

A The claim?

Q Yes.

A Of this?

Q Yes.

A About two months ago.

Q Just two months ago?

A Yes.

Q You hadn't heard of anything before that?

A No. When the damage in the #1 hatch happen, of course I knew that sometime there was some claim and something about that because it was damage, see. And I have been to many ships and when we handle coffee bags to discharge at a port, normally they have some claim when the cargo is damaged for anything, see, broken bags, something like that, or stained bag, or anything. Then normally they send the claim to the ship or to the company, and if the company send a letter to the captain asking about any claim, then they say they request some, you know, any answer or entry or something in the log book or something. Then the

captain ask the chief mate or any mate, and we answer, but specifically in this case I don't remember to see any claim letter.

The first I listen about this claim was around two months ago, somebody call me to the school by phone and tell me somebody was calling via long distance from Mexico to the school, from Mexico to my home, looking for me. Nobody told me wh , which I made a phone call to Mexico to ask why. Somebody from the Mexico office told me it was about, if I can come here to New York for this.

Q How long did you serve on the CAMPECHE as first officer after July of '68?

A Well, I can't tell you just exactly the date, but I was after that. I was again there on the CAMPECHE, being a chief mate. I think so.

Q How long did you work for TMM after '68?

A Altogether?

Q Yes, after '68.

A After '68 -- until, let me remember. I think until December, '67.

Q December of '67? That is when you started to work for them?

A Well, because I stop working on Transportacion Maritima Mexicana, and I went to NAC next. I went to look for a ship to Spain, and I stay on NAVIMEX around two years. Then I came back to Transportacion Maritima Mexicana about two months aboard the BROSLOW (phonetically). And then I came to Nautical Maritime School on January, '73.

MR. MEEKER: I have no further questions at this time.

MR. CAMERA: I have just one or two.

EXAMINATION BY MR. CAMERA:

Q Captain, you testified earlier that during the course of the voyage to New York there were no temperatures taken of the holds, is that correct?

A What did you -- can you say again?

Q During the course of the voyage from Mexico to New York, I believe you testified earlier that there were no temperatures taken of the hold, is that correct?

A Inside the hold?

Q Yes, inside the hold.

A No.

Q There were no temperatures taken?

A No.

Q Did anyone go down to inspect the cargo on the voyage?

A No.

Q If such an inspection had been made, would there be an entry in the log for it?

A What did you tell me, the first word?

MR. MOLANPHY: If somebody did go down into the hold to look and make an inspection, would that be noted in the deck log?

THE WITNESS: When?

Q Immediately after the inspection would an entry be made in the log that the inspection had been made?

A When?

Q When someone would go down to inspect.

A When someone went?

Q If someone had gone down to the hold.

A When?

Q During the voyage.

A During the voyage between --

Q Between Mexico and New York.

A Yes. Well, you must know something.

The ship, before arrival in New York, went to Philadelphia, and we opened that hatch in Philadelphia and discharge from the upper tween deck. And I don't remember too well, but I think maybe we discharged some cargo from the lower tween deck. You can see the plan and take a look. That is the only hatch with the tween deck.

MR. MEEKER: Let the record indicate that the captain is indicating on Plaintiff's Exhibit 1.

A We discharge from the #1, and I remember that we discharge from the upper tween deck. And I don't remember if we discharge from the lower tween deck.

Nobody went down to the lower tween deck, lower hold, at that time.

MR. MEEKER: Let the record indicate that the captain has indicated on Plaintiff's Exhibit 1 that the #1 hatch consisted of the upper tween deck, a lower tween deck, as well as a lower hold.

Q While the vessel was at Philadelphia you say you did discharge some cargo at Philadelphia?

A Yes.

Q. While the vessel was there did anyone inspect the areas where the cocoa butter was stowed?

A No, I don't go.

Q You didn't go?

A I didn't go.

Q Do you know if anyone did?

A I don't know if anyone went, but I don't think so.

Q If someone had inspected those areas, would there be an entry in the log?

A Yes, of course.

MR. CAMERA: I have no further questions.

MR. MEEKER: Can I just ask a few more?

MR. MOLANPHY: Yes.

BY MR. MEEKER:

Q Captain, how long was the vessel at Philadelphia during this voyage?

A Only hours.

Q Captain, you stated that there was a tier of lemon oil between --

A (Interrupting) Drums.

Q Drums beneath the cocoa butter?

A Yes.

Q Underneath?

A Underneath.

Q Under the cocoa butter there were drums, and you stated also that the lemon oil was loaded at Vera Cruz?

A Yes.

Q Was the lemon oil, do you know where the lemon oil was stowed at Vera Cruz prior to loading?

A Repeat that?

Q Before it came on board.

A It was stowed.

Q Yes. Where was it stored in Vera Cruz?

A Out of the ship.

Q In other words, before the CAMPECHE loaded the lemon oil?

A Yes.

Q Where was the lemon oil?

A No, I don't know.

Q You don't know?

A No.

Q Were any temperatures taken of the

lemon oil?

A No.

MR. MEEKER: No further questions at this time.

MR. MOLANPHY: I have.

EXAMINATION BY MR. MOLANPHY:

Q Captain, approximately when did the CAMPECHE load cocoa butter in Coatzacoalcos at the commencement of voyage 63?

A Would you please repeat?

Q Approximately when, what date did the CAMPECHE load cocoa butter in Coatzacoalcos?

A Well, it was the middle of July, I think. I think it was the 13th or 14th.

Q Where had the cocoa butter been before it was loaded on board the ship in Coatzacoalcos?

A. Well, sometimes the cargo on the warehouse, sometimes the cargo comes directly from the truck. Sometimes the cargo comes directly from the railroad. Don't make a difference.

Q Do you know how long this particular cocoa butter was in Coatzacoalcos before it was loaded on the CAMPECHE?

A No. I have no way to know that,

because we arrive at Coatzacoalcos only one day for some hours or something like that.

Q Did the CAMPECHE --

A (Interrupting) Anyway, we never know.

Q Did the CAMPECHE have any control over this cargo before it was underneath the hook to be loaded on board the vessel?

A No, of course not.

MR. MEEKER: I would like to object to the question as leading.

Q Who has custody of the cargo before it is attached to the cargo on the CAMPECHE?

A Well, I don't know just exactly, but I suppose is an agency or somebody.

Q Who does the loading, the actual loading down there?

A In Coatzacoalcos?

Q Yes.

A Well, in Coatzacoalcos there is a stevedore or longshoreman, the union, they do the job.

Q Did you receive any special instructions from the shipper of the cocoa butter as to how it was to be carried aboard the ship?

A No.

Q Do you recall the stowage of this cocoa butter in the #1 lower hold of the CAMPECHE?

A Well, yes.

Q In your opinion, was it properly stowed or improperly stowed?

A Well, in my opinion, that cargo was improper stowage, no reason for my person to be here because that is, in my opinion, is the wrong way to do something. I don't come here. I stay home.

Q Then is it your answer that in your opinion that cargo was properly stowed?

A Yes, that is what I say.

MR. MELKER: Objection to the question as calling for an opinion.

MR. MOLANPHY: I think, counselor, you opened the door on opinions.

Q You mentioned, Captain, that the height of the stow in the #1 lower hold made a difference in what happened to that cargo, is that correct?

MR. MELKER: I object. I don't think the witness has testified to that.

A I don't understand the question.

Q Captain, did you testify before that the weight of the cargo in the #1 lower hold had something to do with what happened to the cargo?

A Yes.

Q Would you explain what you mean by that?

A Well, I think that right now the people is here is thinking that the cargo on board the ship, and I think that we know that the #1 hold is different than the center of the ship hold and different, and how do you call that (indicating)?

Q The shape?

A Yes. If you see a ship you can see the bow, like a, like a wedge (indicating). Then you put cargo here, more cargo here, and more cargo here, and more cargo here (indicating).

MR. MOLANPHY: Indicating from bottom to top.

A (Continuing) You put more weight here on the top, it weighing more on the bottom. That is the thing, the reason. And I think if something happen with the cargo, the more damaged cargo was the center, see (indicating). And I think then

if the cargo of the cocoa butter melted --

MR. MEEKER: Can we go off the record for a moment?

(Off the record discussion.)

MR. MEEKER: Please read back the answer.

(Record read.)

A (Continuing) We know that the cocoa butter was melt or melted, was the correct word.

Q Melted.

A Melted. Then when we saw around the drums was hard again, then in between I was no, I no really looking what happened, but I can think in my mind what happen, that there was change in the termpérature and the cargo melt.

Now what the reason, the cargo didn't stay in the same level and went down and stay down and then harden around the drums, then I can think that the same thing happen. The cargo melt. If you put ice and polyethlene bags, supposing the ice look like this (indicating). You put some warm temperature, that ice become to be water and come like that (indicating).

MR. MOLANPHY: Indicating a flattened

out position.

A (Continuing) If you have too many cubes of ice, one of each in one polyethlene bag and another bag and another bag, and the same temperature in all the cubes of ice, then all of them will come flat. Understand?

MR. MEEKER: Yes.

A (Continuing) Then if the weight crush it, they tear down and break the paper. And I think that break the paper and another, I think the carton, something like that.

Q Will cargo hooks also puncture polyethlene bags, longshoremen's hooks?

A Where?

Q That is, will they also be able to puncture these cartons?

A Where?

Q In New York.

MR. MEEKER: Objection. I have to note an objection to that.

Q Do you know, Captain, whether or not a longshoreman's hook had punctured, gone through the cargo?

A Well, normally longshoreman hook can

stick you and go, break, can break your head. It can break this.

Q Can it also puncture the polyethlene bags?

A Of course, yes.

Q Captain, do you know, was the cocoa butter in the #1 lower hold more than eight boxes high?

A Yes, was more than eight boxes, cartons, I mean.

Q Eight cartons high?

A Yes.

Q Do you have, or could you tell, at the time that the cocoa butter was loaded in Coatzacoalcós, whether there had been any melting of the cocoa butter inside the cartons?

A (No response.)

Q Could you tell that by looking at it?

A Well, no. If we receive some cargo that look like damage or something, we refuse the cargo normally. And if the agency or if the people from shoreside say that we must load the cargo, then we request some letter or something like that, or on the cargo list they put, you know, for how many

cartons damage or broken or something. No, I don't remember nothing special.

Q If a carton of this cocoa butter, by the way, these were cardboard cartons, is that right, that the cocoa butter was shipped in?

A Cartons.

Q Cardboard?

A I don't know what you mean by that. Paper. It is like something more thick

Q Like cardboard, is that it (indicating)?

A This is long, this is wide, and --

Q Thick?

A Like that (indicating).

MR. MOLANPHY: Let the record indicate that the witness is indicating a thickness of approximately half a centimeter.

MR. MEEKER: Half a centimeter.

THE WITNESS: But not as hard as this.

Q Inside the carton is a polyethlene bag?

A Yes.

Q And the cocoa butter is inside that

bag?

A Yes.

Q If one single box of cocoa butter was subjected to heat would the cocoa butter inside that bag melt?

MR. MEEKER: I object to any questions pertaining to the properties of cocoa butter, as it is clear that the witness doesn't know anything about cocoa butter.

MR. MOLANPHY: I don't think that is so at all.

MR. MEEKER: He doesn't know the melting point.

MR. MOLANPHY: That is true, but he knows that it did melt on his voyage.

MR. MEEKER: Well, the objection stands. You may ask him, but the objection stands.

Q If the cocoa butter inside the bag is heated, would it melt?

A What does melt mean, more temperature?

Q Higher temperature, will it melt?

A Right now I think.

Q If there is no pressure on top of the

box will that cocoa butter come out of the bag?

A Well, that is what I was trying to explain with all that about the ice cubes. After the cubes become to be water, see, you put low temperature in and become to be ice again. They stay the last time.

Q They stay flat?

A That is the idea, stay flat. That is the idea, I think.

We know that the cocoa butter was melted because we saw on the bottom of the, in the hold I saw it. You don't know, but I saw it. Then something happen with that burst inside the boxes. That is the reason that I know it was melted.

Q Captain, what are your duties at the school now?

A Well, I am full time teacher in deck area, the last degrees.

Q What subjects do you teach?

A Well, I teach navigation. I teach maneuvering. I teach cargo stowage. I teach law, something like work, federal law.

MR. MEEKER: Labor law?

MR. MOLANPHY: Labor law?

A Something like that, for the ships, the crew members, and classification and insurance of ships. All the matters about the law, registration of the ships, the American Bureau of Shipping, North American, German law, Italiano law, Lloyds.

Q These are future deck officers that you are teaching?

A Yes.

Q Did you say that you now teach them to go down into the hatches with wet and dry bulbs?

A Well, I teach them about that matter, and I teach them about, this is, there is some apparatus that they take the temperature and the dew point from the hold, send it to the bridge, and you can read it, them, and you can operate it and you can take off the humidity by circulating air.

Q Is that for all cargoes?

A Well, no, not for all cargoes, you know.

Q Was that customary in 1968 to do that kind of thing?

A Well, no. The CAMPECHE, he has no dry air drier in hatch, nothing like that.

Q Do you remember approximately when

the CAMPECHE arrived in New York at the end?

A Approximately?

Q Yes.

A It was about July 24th, 25th, something like that.

Q At what pier did you dock?

A Staten Island.

Q Do you remember the number of the pier?

A 20.

Q Do you remember approximately how long you, the ship stayed at Pier 20?

A Around five days. Four, five days, something like that.

Q Were you present at hatch #1 during all the time that the cargoes were being discharged from the lower hold?

A No, not all the time.

Q Do you know what was done with the cargo from the #1 lower hold after it was taken out onto the dock?

A What they do with the cargo that was damaged?

Q Yes, any of the cargo that was in the #1 lower hold, do you know what the longshoremen did

with that cargo after it was taken out of the hatch?

A No. They put it on the pier. I didn't see what they do. I don't remember.

Q In 1968, Captain, was it customary for members of the crew to go down into the hatches of the CAMPECHE during the voyage to inspect the stow?

A Well, suppose if you have some special cargo and there is rough weather and you have the security ropes, the cargo, normally you go to check if you can do it, because sometimes you can't go because all the hatches can be full. You can go down, but sometimes if you can go down take a look, but not always. I think was no, not all the days.

Q If you don't have special cargo and you don't have rough weather, would it be customary to send someone down?

A No.

Q Captain, did you look at any record today that shows the temperature at Staten Island during the time that the CAMPECHE was in there in the summer of 1968?

A Today?

Q Yes.

A Well, this morning --

Q That showed the temperature at Staten Island?

A At Staten Island, just exactly?

Q Yes.

A Well, I saw --

Q Or in New York?

A New York I saw a log book with navigation book that showed some temperatures.

Q But was that for voyage 63, just so the record will be straight, that is the document you are talking about (indicating)?

A Yes.

Q What is that book, Captain?

A This is June diario de navigation book.

Q This is June, 1968?

A Yes. This is June, 1968.

Q Does that log book cover voyage 63 northbound?

A No, this is 63 southbound, 62 northbound and 63 southbound. This is June.

Q Can you tell me what the last day that is recorded in that book is?

A Yes, 30th of June.

Q Can you tell me the first day that is entered in that log book?

A 1st of June.

Q 1968?

A Right.

Q Is that a record that is required to be made aboard the CAMPECHE in the regular course of the ship's business?

A Well, this is a, this is a log book for navigation more than for all the entries.

Q But it does have to be made aboard the ship?

A Yes.

MR. MOLANPHY: Can we have this marked for identification, please?

(Whereupon, the above mentioned document was so marked as Defendant and Third Party Plaintiff's Exhibit A for Identification, this date.)

MR. MOLANPHY: I have no further questions.

MR. MEEKER: I have a few.

BY MR. MEEKER:

Q Captain, will steel melt if heat is added to it?

A (No response.)

Q Will steel melt if heat is added to it?

MR. MOLANPHY: I object to the question on the grounds that it is irrelevant to this case.

Q Will steel melt if you heat it up, if you add heat?

A Yes.

Q It will melt?

A More temperature?

Q Yes. Will that melt?

A What?

Q This thing (indicating).

A This?

Q Yes.

A Well, I don't know. Depend on the temperature.

Q I mean, if you have enough temperature it will melt?

A I think so. If you have enough, suppose 400 or 500 centigrade, yes.

Q Captain, you explained before when you were talking about the #1 hold being a wedge-type thing, in your opinion, to show how this cocoa butter melted in the #1 but not in the #4. You said you could visualize in your mind how that happened after the discharging?

A I say that?

Q I think you said that. In other words, you could visualize how that happened because --

A I said that I visualize? I think this is the first that I pronounce that word. I didn't say the visualize. I said I think.

Q You could see it in your mind?

A I think could happen.

Q Why is it that you could see it in your mind after discharging but not before discharging?

A (No response.)

Q If you put this cargo into the #3 lower hold --

A (Interrupting) #3.

Q (Continuing) -- would that have happened?

A Well, I don't think so.

Q You also stated before that this was the first time you carried cocoa butter on board the CAMPECHE?

A Well, I think so.

Q This was the first time you were ever exposed to it?

A I think so.

Q We have been talking about the deck log here all afternoon. I would like at this point to officially ask for its production, if it hasn't been done already, and I would like to show you, Captain, Plaintiff's Exhibit #2, which was marked at a previous deposition, and ask if this refers to the voyage in question?

MR. MOLANPHY: If you know.

Q If you know.

A I can tell you something about this. I don't, normally I don't handle this kind of paper, but anyway I know what this, written in Spanish, and I think what that means. This is a cargo list, and they normally give at Coatzacoalcos.

MR. MOLANPHY: Indicating the last two pages of several documents handed to the witness.

A (Continuing) This is a copy of the cargo list.

Q That is the cargo list for the cargo in question today?

A Yes. One over here (indicating).

MR. MEEKER: Let the record indicate that the captain is referring to the bottom of the last page to indicate the cargo we are speaking of.

THE WITNESS: I don't understand it. Here it says bodega numero dos. Here it says bodega nothing. Here it says bodega dos. Here it says bodega nothing. Here it says cocoa butter 1 lower hold after number of cartons, 3,668 cartons, #4 tween deck forward, 2,732 cartons. I don't see here any #2 bodega. Then this must be, this is only from shore or maybe this is only on the shore, not the ship. It says bodega --

MR. MEEKER: Off the record.

(Off the record discussion.)

Q Captain, can you tell me what bodega means?

A Bodega look like mean hatch or

warehouse.

Q Could you tell me what Cabo de Cuadrilla means?

A Something like this man have command the gang, like the foreman of the gang.

Q Here it says bodega. Can that also mean warehouse?

A I think it can be. Maybe this is warehouse, but his it say bodega. Okay, on our discharge, bodega. Discharge, bodega. Maybe bodega dos. Maybe that is the number two. Maybe that is the warehouse number.

MR. MEEKER: Let the record indicate we are referring to a document called Papeleta De Cheque on Plaintiffs Exhibit #2 dated 7/2/74, initials YAP.

Q Captain, where it says Inic y Num. de Carros on the Papeleta De Cheque, there is mention of bodega number, which could mean warehouse, is that right?

A It could be. I don't know.

Q On the Papeleta De Cheque where bodega is mentioned, there are indications that the cargo came by a vehicle or a truck, is that correct?

A That says here trailer.

Q Or trailer?

A Yes.

Q That holds true for all the Papeleta De Cheque?

A Camion. That says that, and this one nothing.

Q What means camion?

A Truck.

I don't know what this, I can't identify this letter here. It says camiones. That means trucks. This one says trucks, and I don't know what this is.

Q Camiones?

A Maybe from trucks.

Q From trucks?

A From trucks.

Q Captain, the stowage list which is attached to this exhibit that we are talking about indicates that 3,668 cartons were stowed in one lower hold aft?

A Yes.

Q 2,732 cartons were stowed in 4 tween deck forward, is that correct?

A That's right. That indicates that.

MR. MEEKER: I have no further questions.

MR. MOLANPHY: I have.

BY MR. MOLANPHY:

Q Captain, could you tell me who decided to stow the cargo in the lower #1 hold of the CAMPECHE, the cargo of the cocoa butter?

A Me.

Q Why did you select #1 lower hold?

A Well, there is very many reasons to do that. According with how the ship, how much cargo it has in every space. All that matters. And according with if you have enough room to do it. Very, very many reasons, like you must keep the gang going, you must keep some space for another cargo, and you must keep trim, very many things.

Q Did you testify before that if this cargo had been stowed in the #3 lower hold that it would not have been damaged?

A Well, depend, depend on how much cargo we put in it. Depend how we put the cargo, and depend.

Q If you had just as much?

A And the kind of ship, of course.

Q Captain, if you had just this much weight in the #3 lower hold on board the cocoa butter, would you expect that you would have damage to the lower tiers?

A One minute, please. When I was explaining that I was talking about the figure of the hold in the hatch.

Q In hatch #1?

A Yes. I think there is, down here there is less area than on top (indicating), and when I was talking about the weight I was not just talking about this (indicating). Also concerned about the figures, see? This is the thing. If you put less area here and the same height, you have more area here you have on top of the small area, more weight, and in the same area you put it here (indicating), same area, and the same height you have for more area the same weight. It has, that is what I was trying to explain.

Q Along those lines, Captain, is English your native language?

A No.

Q What is your native language, Spanish,

sir?

A Spanish.

Q Do you feel that you have had some difficulty today in expressing yourself in English?

A Well, I think I speak some English, but I don't speak the English like you.

I think I told before that if all these questions are made in my language I can answer better, and I think that if I asked the questions and you right now must answer me in my own language, it is more difficult for you. That is what I mean.

MR. MEEKER: I would like to state for the record that counsel for the plaintiff inquired of counsel for the defendant, THI, whether an interpreter would be required, which I would have furnished, would have been furnished at plaintiff's expense, and I was informed that no interpreter would be required.

MR. MOLANPHY: I have no further questions.

MR. MEEKER: I have none.

MR. CAMERA: None.

Due and timely service of TWO copies
of the within APPENDIX is hereby
admitted this 18TH day of AUGUST 1975

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